Land Use Planning/Area of Impact

IDAHO CODE

The following outline of Idaho Code is intended to provide the reader with a summary guide to statutes that may be related to and address Land Use Planning and Areas of Impact. Included but not limited to are topical areas of relevance either through process or procedure that establish methodology for positive, productive outcomes.

TITLE 1 COURTS AND COURT OFFICIALS
TITLE 2 JURIES AND JURORS
TITLE 3 ATTORNEYS AND COUNSELORS AT LAW
TITLE 4 LAW LIBRARIES
TITLE 5 PROCEEDINGS IN CIVIL ACTIONS IN COURTS OF RECORD
TITLE 6 ACTIONS IN PARTICULAR CASES
TITLE 7 SPECIAL PROCEEDINGS
- CHAPTER 1 PRELIMINARY PROVISIONS -- [REPEALED]
- CHAPTER 2 WRITS OF REVIEW
- CHAPTER 3 WRITS OF MANDATE
- CHAPTER 4 WRITS OF PROHIBITION
- CHAPTER 5 PROVISIONS APPLICABLE TO WRITS IN GENERAL -- [REPEALED]
- CHAPTER 6 CONTEMPTS
- **CHAPTER 7 EMINENT DOMAIN**

7-701. USES FOR WHICH AUTHORIZED. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislature.
2. Public buildings and grounds for the use of any county, incorporated city or school district; canals, aqueducts, flumes, ditches or pipes for conducting water for use on state property or for the use of the inhabitants of any county or incorporated city, or for draining state property for any county or incorporated city, raising the banks of streams, removing obstructions therefrom and widening, deepening or straightening their channels, roads, streets, alleys, and all other public uses for the benefit of the state or of any county, incorporated city or the inhabitants thereof.
3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, steam, electric and horse railroads, reservoirs, canals, ditches, flumes, aqueducts and pipes, for public transportation supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for storing and floating logs and lumber on streams not navigable.
4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.
5. Byroads, leading from highways to residences and farms.
6. Telephones, telegraph and telephone lines.
7. Sewerage of any incorporated city ...

7-720. APPLICATION TO MUNICIPALITIES. Nothing in this code must be construed to abrogate or repeal any statute provided for the taking of property in any municipality for street purposes. Any municipality at its option may exercise the right of eminent domain under the provisions of this chapter for any of the uses and purposes mentioned in sections 50-1124 and 50-1125, in like manner and to the same extent as for any of the purposes mentioned in section 7-701.

- CHAPTER 8 CHANGE OF NAMES
- CHAPTER 9 UNIFORM ARBITRATION ACT
- CHAPTER 10 UNIFORM INTERSTATE FAMILY SUPPORT ACT
- CHAPTER 11 PROCEEDINGS TO ESTABLISH PATERNITY
- CHAPTER 12 ENFORCEMENT OF CHILD SUPPORT ORDERS
- CHAPTER 13 JUDICIAL CONFIRMATION
- CHAPTER 14 FAMILY LAW LICENSE SUSPENSIONS
- CHAPTER 15 SMALL LAWSUIT RESOLUTION ACT

TITLE 8 PROVISIONAL REMEDIES IN CIVIL ACTIONS
TITLE 9 EVIDENCE
TITLE 10 ISSUES, TRIAL AND JUDGMENT IN CIVIL ACTIONS
TITLE 11 ENFORCEMENT OF JUDGMENTS IN CIVIL ACTIONS
TITLE 12 COSTS AND MISCELLANEOUS MATTERS IN CIVIL ACTIONS
TITLE 13 APPEALS IN CIVIL ACTIONS

TITLE 14 ESTATES OF DECEDENTS
TITLE 15 UNIFORM PROBATE CODE
TITLE 16 JUVENILE PROCEEDINGS
TITLE 17 APPEALS
TITLE 18 CRIMES AND PUNISHMENTS
TITLE 19 CRIMINAL PROCEDURE
TITLE 20 STATE PRISON AND COUNTY JAILS
TITLE 21 AERONAUTICS
TITLE 22 AGRICULTURE AND HORTICULTURE
TITLE 23 ALCOHOLIC BEVERAGES
TITLE 24 ALIENS -- (REPEALED)
TITLE 25 ANIMALS
TITLE 26 BANKS AND BANKING
TITLE 27 CEMETERIES AND CREMATORIUMS
TITLE 28 COMMERCIAL TRANSACTIONS
TITLE 29 CONTRACTS
TITLE 30 CORPORATIONS
TITLE 31 COUNTIES AND COUNTY LAW
  CHAPTER 1 COUNTY BOUNDARIES AND COUNTY SEATS
  CHAPTER 2 REMOVAL OF COUNTY SEATS AND CHANGE OF COUNTY BOUNDARIES

31-212. CHANGING COUNTY BOUNDARIES. Whenever the boards of county commissioners of affected counties have by joint ordinance provided that a part of an affected county be stricken off from said county and annexed to an adjoining affected county, the provisions of the constitution being complied with, the qualified electors who have resided ninety (90) days next preceding the first general election after the passage of this chapter within the boundary lines of the territory stricken off and annexed, shall be permitted to vote at said general election, for or against said annexation.

  CHAPTER 3 COUNTY DIVISION -- TRANSFER OF RECORDS
  CHAPTER 4 CONSOLIDATION OF COUNTIES

31-401. AUTHORITY FOR COUNTY CONSOLIDATION. Counties of the state of Idaho as they now exist, or may hereafter be created or exist, may be consolidated as in this act provided.

  CHAPTER 5 REFUNDING BONDS IN NEW COUNTIES
  CHAPTER 6 COUNTIES AS BODIES CORPORATE
  CHAPTER 7 BOARD OF COUNTY COMMISSIONERS
  CHAPTER 8 POWERS AND DUTIES OF BOARD OF COMMISSIONERS

31-877. WATER AND SEWER SERVICES. The boards of county commissioners in their respective counties shall have the authority to provide necessary water and sewer services to any part of the county which does not receive water and sewer services, or any part of the county where a water and sewer or a water or sewer district has been dissolved pursuant to chapter 41, title 63, Idaho Code. For purposes of this section, a board of county commissioners shall have the authority granted to water and sewer districts pursuant to chapter 32, title 42, Idaho Code, and the authority granted to municipalities pursuant to the provisions of title 50, Idaho Code.

  CHAPTER 9 RECLAMATION, DRAINAGE AND DROUGHT RELIEF -- COOPERATION WITH FEDERAL AGENCIES
  CHAPTER 10 ERECTION OF PUBLIC BUILDINGS
  CHAPTER 11 PUBLIC SCALES -- [REPEALED]
  CHAPTER 12 AMUSEMENT RESORTS -- [REPEALED]
  CHAPTER 13 PEDDLERS -- LICENSES -- [REPEALED]
  CHAPTER 14 FIRE PROTECTION DISTRICT
  CHAPTER 15 COUNTY FINANCES AND CLAIMS AGAINST COUNTY
  CHAPTER 16 COUNTY BUDGET LAW
  CHAPTER 17 AUDITS OF COUNTY RECORDS
  CHAPTER 18 SHERIFF'S REVOLVING EXPENSE FUND
  CHAPTER 19 COUNTY BOND ISSUES
  CHAPTER 20 COUNTY OFFICERS IN GENERAL
  CHAPTER 21 COUNTY TREASURER AND TAX COLLECTOR
  CHAPTER 22 SHERIFF
  CHAPTER 23 COUNTY AUDITOR
  CHAPTER 24 RECORDER
  CHAPTER 25 ASSESSOR
  CHAPTER 26 PROSECUTING ATTORNEY
  CHAPTER 27 COUNTY SURVEYOR
  CHAPTER 28 CORONER
  CHAPTER 29 COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION [REPEALED]
  CHAPTER 30 CONSTABLES -- [REPEALED]
  CHAPTER 31 SALARIES OF OFFICERS
  CHAPTER 32 FEES
  CHAPTER 33 OTHER COUNTY CHARGES
  CHAPTER 34 NONMEDICAL INDIGENT ASSISTANCE
  CHAPTER 35 HOSPITALS FOR INDIGENT SICK

CHAPTER A35 PRELITIGATION CONSIDERATION OF INDIGENT RESOURCE ELIGIBILITY CLAIMS
CHAPTER 36 COUNTY HOSPITAL BOARDS
CHAPTER 37 JOINT CITY AND COUNTY HOSPITALS

31-3701. ACQUISITION AND OPERATION AUTHORIZED. Any county and city located in such county are hereby authorized to create a joint county-city hospital authority, to jointly purchase, build, maintain and operate hospitals, hospital grounds, nurses homes, superintendent's quarters and any other necessary buildings and equipment, on such terms and paying for the same in such proportions as such governing bodies of such county and city may determine, and may jointly operate any hospital or hospitals which are separately owned by the county or the city as a joint county-city hospital authority. A joint county-city hospital authority may be created under this chapter by joint agreement approved by resolution of the board of county commissioners of the county and the city council of the city. A joint county-city hospital authority created under this chapter shall be an independent legal entity with the powers set forth in this chapter.

CHAPTER 38 ZONING REGULATIONS

31-3805. DELIVERY OF WATER. (1) When either a subdivision within the meaning of chapter 13, title 50, Idaho Code, or a subdivision subject to a more restrictive county or city zoning ordinance is proposed within the state of Idaho, and all or any part of said subdivision would be located within the boundaries of an existing irrigation district or other canal company, ditch association, or like irrigation water delivery entity, hereinafter called "irrigation entity" for the purposes of this chapter, no subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land will be accepted, approved, and recorded unless:

(a) The water rights appurtenant and the assessment obligation of the lands in said subdivision which are within the irrigation entity have been transferred from said lands or excluded from an irrigation entity by the owner thereof; or by the person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land; or

(b) The owner or person, firm or corporation filing the subdivision plat or amendment to a subdivision plat or any other plat or map recognized by the city or county for the division of land has provided for underground tile or other like satisfactory underground conduit for lots of one (1) acre or less, or a suitable system for lots of more than one (1) acre which will deliver water to those landowners within the subdivision who are also within the irrigation entity, with the following appropriate approvals:

(i) For proposed subdivisions within the incorporated limits of a city, the irrigation system must be approved by the city zoning authority or the city council, as provided by city ordinance, with the advice of the irrigation entity charged with the delivery of water to said lands.

(ii) For proposed subdivisions located outside incorporated cities but within a negotiated area of city impact pursuant to chapter 65, title 67, Idaho Code, or within one (1) mile outside the incorporated limits of any city, both city and county zoning authorities and city council and county commissions must approve such irrigation system in accordance with section 50-1306, Idaho Code. In addition, the irrigation entity charged with the delivery of water to said lands must be advised regarding the irrigation system.

(iii) For proposed subdivisions located outside an area of city impact in counties with a zoning ordinance, the delivery system must be approved by the appropriate county zoning authority, and the county commission with the advice of the irrigation entity charged with the delivery of water to said lands.

(iv) For proposed subdivisions located outside an area of city impact in counties without a zoning ordinance, such irrigation system must be approved by the board of county commissioners with the advice of the irrigation entity charged with the delivery of water to said lands. ...

CHAPTER 39 AMBULANCE SERVICE
CHAPTER 40 EXPENDITURES AND BIDS
CHAPTER 41 TELEVISION TRANSLATOR STATIONS
CHAPTER 42 COUNTY HOUSING AUTHORITIES AND COOPERATION LAW

31-4215. HOUSING PROJECTS SUBJECT TO PLANNING, ZONING, SANITARY AND BUILDING LAWS. All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality of any housing project and an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

CHAPTER 43 RECREATION DISTRICTS
CHAPTER 44 SOLID WASTE DISPOSAL SITES
CHAPTER 45 POLLUTION CONTROL FINANCING

31-4502. DECLARATION OF NECESSITY AND PURPOSE -- LIBERAL CONSTRUCTION.

(a) The legislature of the state of Idaho hereby finds:
(i) that environmental damage seriously endangers the public health and welfare;
(ii) that such environmental damage results from air, water, and other resource pollution and from public water supply, solid waste disposal, noise and other environmental problems;
(iii) that to reduce, control and prevent such pollution and problems, quality standards have been established necessitating the employment of antipollution devices, equipment and facilities, and stringent time schedules have been and will be imposed for compliance with such standards;
(iv) that it is desirable to provide methods of financing the costs of acquiring, constructing, installing and equipping facilities designed for environmental pollution control, including the acquisition of all pollution control; and
(v) that the method of financing provided in this act is therefore in the public interest and serves a public purpose in protecting and promoting the health and welfare of the citizens of this state by reducing, controlling and preventing environmental damage.
(b) It is the purpose of this act, as more specifically described in later sections, to authorize counties to acquire, construct, install, equip, own, finance and lease environmental pollution control facilities, including the acquisition of all technological facilities and equipment necessary or convenient for pollution control, to be financed for, or to be sold, leased or otherwise disposed of to persons, associations or corporations other than municipal corporations or other political subdivisions, to the end that the counties may be able to promote the health and welfare of the people of this state; it is not intended by this act that any county shall itself be authorized to operate any industrial or commercial enterprise or any such environmental pollution control facilities.
(c) This act shall be liberally construed to accomplish the intentions expressed herein.

31-4514. JOINT OPERATION. The powers herein conferred upon counties under this act may be exercised by two (2) or more counties acting jointly.

CHAPTER 50 OPTIONAL FORMS OF COUNTY GOVERNMENT GENERAL PROVISIONS
CHAPTER 51 STUDY COMMISSION
CHAPTER 52 COMMISSION-EXECUTIVE FORM OF COUNTY GOVERNMENT
CHAPTER 53 COMMISSION-MANAGER
CHAPTER 54 THREE-MEMBER BOARD OF COUNTY COMMISSIONERS WITH CHANGES IN OTHER COUNTY OFFICES
CHAPTER 55 FIVE-MEMBER BOARD OF COUNTY COMMISSIONERS
CHAPTER 56 SEVEN-MEMBER BOARD OF COUNTY COMMISSIONERS
CHAPTER 57 CONSOLIDATION OF OFFICES AMONG COUNTIES
CHAPTER 58 CHARTER FORM OF COUNTY GOVERNMENT

TITLE 32 DOMESTIC RELATIONS
TITLE 33 EDUCATION
TITLE 34 ELECTIONS
TITLE 35 FENCES
TITLE 36 FISH AND GAME
TITLE 37 FOOD, DRUGS, AND OIL
TITLE 38 FORESTRY, FOREST PRODUCTS AND STUMPAGE DISTRICTS
TITLE 39 HEALTH AND SAFETY
CHAPTER 1 ENVIRONMENTAL QUALITY – HEALTH

39-103. DEFINITIONS. –

(8) "Water Pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, esthetic or other legitimate uses or to live stock, wild animals, birds, fish or other aquatic life.
(9) "Waters" means all the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through or border upon this state.
(13) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(15) "Public Water Supply" means all mains, pipes, and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use in incorporated municipalities; or unincorporated communities where ten (10) or more separate premises or households are being served or intended to be served; or any other supply which serves water to the public and which the department of health and welfare declares to have potential health significance.

39-108. INVESTIGATION -- INSPECTION -- RIGHT OF ENTRY -- VIOLATION -- ENFORCEMENT -- PENALTY --INJUNCTIONS. –

(1) The director shall cause investigations to be made upon the request of the board or upon receipt of information concerning an alleged violation of this act or of any rule, regulation, permit, or order promulgated thereunder, and may cause to be made such other investigations as the director shall deem advisable.

(2) For the purpose of enforcing any provision of this chapter or any rule or regulation authorized in this chapter, the director or the director's designee shall have the authority to:

(a) Conduct a program of continuing surveillance and of regular or periodic inspection of actual or potential health hazards, air contamination sources, water pollution sources, noise sources, and of solid waste disposal sites;

(b) Enter at all reasonable times upon any private or public property, upon presentation of appropriate credentials, for the purpose of inspecting or investigating to ascertain possible violations of this act or of rules, regulations, permits or orders adopted and promulgated by the director or the board;

(c) All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and section 17, article I, of the constitution of the state of Idaho. The state shall not, under authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or occupier or exigent circumstances such as a public health or environmental emergency;

(d) Any district court in and for the county in which subject property is located is authorized to issue a search warrant to the director upon a showing of

(i) probable cause to suspect a violation, or

(ii) the existence of a reasonable program of inspection. Any search warrant issued under the authority of this chapter shall be limited in scope to the specific purposes for which it is issued and shall state with specificity the manner and the scope of the search authorized.

(3) Whenever the director determines that any person is in violation of any provision of this act or any rule, regulation, permit or order issued or promulgated pursuant to this act, the director may commence either of the following:

(a) Administrative enforcement action.

(i) Notice. The director may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the act, rule, regulation, permit or order which has been violated, and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed.

(ii) Scheduling compliance conference. If a recipient of a notice of violation contacts the department within fifteen (15) days of receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the date of receipt of the notice, unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in paragraph b. of this subsection.

(iii) Compliance conference. Th e compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where

appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance.

(iv) Consent order. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty.

(v) Effect of consent order. A consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain, in any appropriate district court, specific performance of the consent order and such other relief as authorized by this chapter.

(vi) Failure to reach a consent order. If the parties cannot reach agreement on a consent order within sixty (60) days after receipt of the notice of violation or if the recipient does not request a compliance conference as per subsection a.ii. of this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection b. of this section.

(b) Civil enforcement action. The director may initiate a civil enforcement action through the attorney general as provided in section 39-109, Idaho Code. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provisions of this act or any rule, regulation, permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any rule, regulations, permit or order promulgated hereunder and for any relief or remedies authorized in this act. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

(4) No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, regulation, permit or order issued or promulgated pursuant to this chapter, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

(5) Monetary Penalties.

(a) Any person determined in a civil enforcement action to have violated any provision of this act or any rule, regulation, permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) per violation or one thousand dollars ($1,000) for each day of a continuing violation, whichever is greater or ten thousand dollars ($10,000) for each separate air violation and day of continuing air violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this act shall be paid into the general fund of the state. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(c) The imposition or computation of monetary penalties may take into account the seriousness of the violation, good faith efforts to comply with the law, and an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For purpose of this section, “supplemental environmental project” means a project which the person is not otherwise required to perform and which prevents pollution, reduces the amount of pollutants reaching the environment, contributes to public awareness of environmental matters, or enhances the quality of the environment. In evaluating a particular supplemental environmental project proposal, preference may be given to those projects with an environmental benefit which relates to the violation or the objectives of the underlying statute which was violated or which enhances the quality of the environment in the general geographic location where the violation occurred.

(6) In addition to such civil penalties, any person who has been determined to have violated the provisions of this act or the rules, regulations, permits or orders promulgated thereunder, shall be liable for any expense incurred by the state in enforcing the act, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness, or health hazard.

(7) No action taken pursuant to the provisions of this act or of any other environmental protection or health law shall relieve any person form any civil action and damages that may exist for injury or damage resulting from any violations of this act or the rules, regulations, permits and orders promulgated thereunder.

(8) In addition to, and notwithstanding other provisions of this act, in circumstances of emergency creating conditions of imminent and substantial danger to the public health or environment, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any discharge, emission or other activity in violation of provisions of this act or rules, regulations, permits and orders promulgated thereunder. In such action the court may issue an ex-parte restraining order.

39-115. POLLUTION SOURCE PERMITS.

(a) The director shall have the authority to issue pollution source permits in compliance with rules established hereunder.

(b) The director shall develop and recommend to the board for adoption through rulemaking, criteria to determine insignificant activities and such sources or modification with emissions at or below the de minimis level which shall not require either a permit to construct or a permit to operate; provided however, that a registration of the activities or sources may be required. The director shall have the authority to sue in competent courts to enjoin any threatened or continuing: Violations of pollution source permits or conditions thereof without the necessity of a prior revocation of the permit; or (Construction of an industrial or commercial air pollution source without a permit required under this chapter or rules adopted hereunder. The department is authorized to charge and collect a fee for processing applications for industrial or commercial air pollution source permits in accordance with a fee schedule established by the board pursuant to this chapter. For fees charged for operating permits under title V of the federal clean air act amendments of 1990, the department shall not charge a fee on any hazardous air pollutant other than those listed under section 112 of the federal clean air act. The fee schedule shall be structured to provide an incentive for emission reduction. The director may issue air emission source permits to construct a facility to incinerate any waste or waste item contaminated with polychlorinated biphenyls (PCBs) only if the director finds: The facility will not be sited in complex valley terrain where the valley floor is less than five (5) miles wide and the valley walls rise more than one thousand (1,000) feet; The facility has complied with local planning and zoning requirements; There has been an opportunity for public participation; and The facility will employ best available technology and instrumentation. Subsection (4) of this section shall not apply to incineration activities existing on or before January 1, 1987.

39-117. VIOLATION -- PENALTY. –

(1) Any person who willfully or negligently violates any of the provisions of the non-air quality public health or environmental protection laws or terms of any lawful notice, order, permit, standard, rule or regulation issued pursuant thereto, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) for each separate violation or one thousand dollars ($1,000) per day for continuing violations, whichever is greater.

39-118. REVIEW OF PLANS. –

(1) Except as provided for dairy systems pursuant to section 37-401, Idaho Code, all plans and specification for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities, public water supply systems or public water treatment systems or for modification or expansion to existing sewage treatment plants or systems, waste treatment or disposal facilities, public water supply systems or public water treatment systems, shall be submitted to and approved by the department of health and welfare before construction may begin, and all construction shall be in compliance therewith. No deviation shall be made from the approved plans and specifications without the prior approval of the department. Within thirty (30) days of completion of construction, alteration, or modification of any new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities, public water supply systems or public water treatment systems, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed must be submitted to the department of health and welfare. If construction does not deviate from the original plans previously submitted for approval, a statement to that effect shall be filed with the department.

(2) All plans and specifications submitted to satisfy the requirements of this section shall conform in style and quality to regularly accepted engineering standards. Except with respect to plans and specifications for facilities addressed in subsection 3 of this section, and confined animal feeding operations, the board may require that certain types of plans and specifications must be certified by registered professional engineers. If the department determines that any particular facility or category of facilities will produce no significant impact on the environment or on the

public health, the department shall be authorized to waive the submittal or approval requirement for that facility or category of facilities.

(3) All plans and specifications for the construction, modification, expansion, or alteration of waste treatment or disposal facilities for aquaculture facilities licensed by the department of agriculture for both commercial fish propagation facilities as defined in section 22-4601, Idaho Code, and sport fish propagation facilities whether private or operated or licensed by the department of fish and game and other aquaculture facilities as defined in the Idaho waste management guidelines for aquaculture operations, shall be submitted and approved by the department of health and welfare before construction may begin and all construction shall be in compliance therewith. The department shall review plans and specifications within forty-five (45) days of submittal and notify the owner or responsible party of approval or disapproval. In the event of disapproval the department shall provide reasons for disapproval in writing to the owner or responsible party. Plans and specifications shall conform in style and quality to standard industry practices and guidelines developed pursuant to this subsection. The director shall establish industry guidelines or best management practices subcommittees composed of members of the department, specific regulatory agencies for the industry, general public, and persons involved in the industry to develop and update guidelines or best management practices as needed. Within thirty (30) days of the completion of the construction, modification, expansion, or alteration of facilities subject to this subsection, the owner or responsible party shall submit a statement to the department that the construction has been completed and is in substantial compliance with the plans and specifications as submitted and approved. The department shall conduct an inspection within sixty (60) days of the date of submission of the statement and shall inform the owner or responsible party of its approval of the construction or in the event of non-approval the reasons for non-approval.

39-126. DUTIES OF STATE AND LOCAL UNITS OF GOVERNMENT

(1) All state agencies shall incorporate the adopted ground water quality protection plan in the administration of their programs and shall have such additional authority to promulgate rules to protect ground water quality as necessary to administer such programs which shall be in conformity with the ground water quality protection plan. Cities, counties and other political subdivisions of the state shall incorporate the ground water quality protection plan in their programs and are also authorized and encouraged to implement ground water quality protection policies within their respective jurisdictions, provided that the implementation is consistent with and not preempted by the laws of the state, the ground water quality protection plan and any rules promulgated there under. All state agencies, cities, counties and other political subdivisions shall cooperate with the department of environmental quality, the department of agriculture and the department of water resources in disseminating public information and education materials concerning the use and protection of ground water quality, in collecting ground water quality management data, and in conducting research on technologies to prevent or remedy contamination of ground water.

(2) Notwithstanding any other provision of law to the contrary, except as provided in subsection (3) of this section, whenever a state agency, city, county or other political subdivision of the state issues a permit or license which deals with the environment, the entity issuing the permit or license shall take into account the effect the permitted or licensed activity will have on the ground water quality of the state and it may attach conditions to the permit or license in order to mitigate potential or actual adverse effects from the permitted or licensed activity on the ground water quality of the state. Nothing contained in this section shall authorize a state agency, city, county or other political subdivision of the state to issue or require a permit or license which it is not otherwise allowed by law to issue or require.

(3) Except as otherwise provided by the ground water quality protection plan, if a permit or license which deals with the environment is required to be obtained from a state agency and that agency considers the effect of the permitted or licensed activity on ground water quality, after notice to other units of government which may otherwise have regulatory authority over the activity which is the subject of the permit or license, a city, county or other political subdivision of the state shall not prohibit, limit or otherwise condition the rights of the permittee or licensee under the permit or license on account of the effect the permitted or licensed activity may have on ground water quality. Nothing contained in this section shall be deemed to permit cities, counties or other political subdivisions of the state to regulate ground water quality with respect to any activity for which another statute or other statutes may have expressly or impliedly preempted such local ground water quality regulation.

39-128. APPLICABILITY -- PROMULGATION OF RULES -- ESTABLISHMENT OF ZONES -- COMBUSTOR CHARGING COMPOSITION AND RECORDKEEPING -- REPORT TO LOCAL GOVERNMENT -- PERMIT PROCESSING.

1. Except as provided in subsection 2 of this section, the provisions of this section shall apply to medical waste combustors with a maximum rated capacity equal to or greater than three (3) tons per day. All combustors located on one (1) or more contiguous or adjacent properties and owned or operated by the same person or persons under common control shall be considered in determining the maximum rated capacity of a combustor.
2. The department is hereby directed to develop and propose, and the board is hereby directed to adopt, rules and regulations controlling emissions of air contaminants from all medical waste combustors, and implementing the provisions of this section except the provisions of subsections 8 and 9.
3. The following zones are hereby established:
   a. Zone 1, consisting of the counties of Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone.
   b. Zone 2, consisting of the counties of Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington.
   c. Zone 3, consisting of the counties of Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding, Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton and Twin Falls.
4. Any county may petition the director to become incorporated into an adjacent zone. The director shall grant the petition provided it does not conflict with the purposes of this act, or any rule, regulation, permit or order issued or promulgated pursuant to this act.
5. For any combustor constructed or modified after the date of enactment of this section, no less than seventy per cent (70%) of the weight of the material charged into the combustor on an annual basis shall be material generated inside the zone in which the combustor is located.
6. An owner or operator of a combustor constructed and operated prior to the date of enactment of this section shall, by October 1, 1992, notify the department in writing describing the type, location and maximum rated capacity of the combustor.
7. Any person who owns or operates a combustor shall keep records as to the source, weight and type of material charged, and whether the material was generated within or outside the zone in which the combustor is located. These records shall be maintained for a period of not less than five (5) years and shall be made available to the department upon request. The requirements of this subsection may be fully or partially waived by the director if the owner or operator certifies to the department that no material generated outside the zone shall be charged into the combustor.
8. Any person proposing to construct or modify a combustor shall provide, in writing, to the local government a comprehensive report which shall include:
   a. An overall description of the project;
   b. The amount, type and disposal method of all solid waste produced;
   c. The amount and content of any liquid to be discharged into the sewer system, applied to the land, or discharged into an impoundment or pond;
   d. The amount, type and control of air emissions;
   e. The effect of the facility on vehicular traffic;
   f. The amount of noise produced by the facility;
   g. The extent and control of odors from the facility; and
   h. Any additional information requested, in writing, by the local government pertaining to the effect of the proposed facility upon the community or local resources.
9. The local government shall conduct at least one (1) public hearing regarding any proposal to construct or modify a combustor within the jurisdiction of the local government at which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place of the hearing, a brief summary of the proposal, and the location of the comprehensive report required by the provisions of subsection 8 of this section, shall be published in a newspaper of general circulation within the jurisdiction of the local government. The local government shall, after hearing, notify in writing the person proposing to construct or modify the combustor that the proposal conforms or does not conform to applicable planning and zoning ordinances. Reasonable conditions may be placed on any approval so as to ensure that construction or modification of the combustor is in conformance with local planning and zoning ordinances and that all necessary local, state and federal permits are obtained.
10. Any person applying to the department for a permit to construct or modify a combustor shall submit, as part of the application, the notification required in subsection 8 of this section indicating that the proposal conforms, or conforms with conditions, to local government planning and zoning ordinances. Any application received by the department which does not include such a notification of approval or conditional approval shall be incomplete.
11. The director shall have authority to sue in competent courts to enjoin any threatened or continuing violation of the provisions of this section, or any rule, regulation, permit or order issued or promulgated to implement the

provisions of this section. The court shall grant injunctive relief upon a showing that a violation of the provisions of this section or any rule, regulation, permit or order implementing the provisions of this section has occurred and is reasonably likely to continue.

12. The director shall have the authority to declare that an emergency exists and that a combustor may receive a waiver to combust material generated outside the zone in which the combustor is located in excess of the amount specified in subsection 5 of this section, provided the director finds that such an action is necessary to protect human health and the environment. The waiver shall not extend beyond six (6) months for any single combustor and eighteen (18) months in total duration.

12. For purposes of this section only:

a. The term "combustor" means a medical waste combustor as defined in section 39-103, Idaho Code.

b. The term "local government" means the city government for the city in which the combustor is to be located or, if the combustor is to be located outside the limits of an incorporated city, the county government for the county in which the combustor is to be located.

39-129. APPLICABILITY -- DEFINITION OF LOCAL GOVERNMENT AND MANDATES -- AUTHORIZATION FOR LOCAL GOVERNMENT AGREEMENTS -- ADOPTION OF RULES -- ESTABLISHMENT OF SCHEDULES -- PRIORITY OF CONSIDERATIONS -- REPORT AND RECOMMENDATIONS. The provisions of this section shall apply to local governments providing drinking water, municipal waste disposal, municipal sewage or waste water disposal or treatment, or air pollution abatement, which can demonstrate to the satisfaction of the department that increasing and cumulative regulatory requirements applicable to such services cannot be met in a timely and reasonable manner. The provisions of the section do not apply where prohibited by federal or state laws or regulations for the protection of human health and the environment.

(1) For purposes of this section the term "local government" means the government of a county or incorporated city, and the term "federal mandates" means those requirements arising from federal statutes or subsequent regulations administered by the United States environmental protection agency.

(2) The department is hereby authorized to enter into agreements with local governments. The agreement may include a binding schedule enforceable under this chapter for the improvement, modification, construction, or other actions, necessary in order for the local government to come into compliance as expeditiously as practicable with human health and environmental protection statutes and rules stemming from federal mandates.

(3) The department may propose, and the board adopt, rules necessary for the implementation of this section.

(4) In establishing any local government agreement schedule, the term of the agreement shall not exceed fifteen (15) years, although successive agreements may be entered into. All agreements must be signed by the director or his designee and the mayor of the city or county commissioners of the county, as appropriate. All agreements are enforceable as orders under the provisions of this chapter.

(5) Agreements and schedules entered into under this act shall take into account, in descending priority the:

(a) Protection of public health;

(b) Protection of the environment;

(c) Current tax structure and rates as compared to other local governments;

(d) Ability of the local government to pay for costs of compliance;

(e) Current fiscal obligations of the local government;

(f) Other factors as determined by the department or the board.

39-3601. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. The legislature, recognizing that surface water is one of the state's most valuable natural resources, has approved the adoption of water quality standards and authorized the director of the department of environmental quality in accordance with the provisions of this chapter, to implement these standards. In order to maintain and achieve existing and designated beneficial uses and to conform to the expressed intent of congress to control pollution of streams, lakes and other surface waters, the legislature declares that it is the purpose of this chapter to enhance and preserve the quality and value of the surface water resources of the state of Idaho, and to define the responsibilities of public agencies in the control, and monitoring of water pollution, and, through implementation of this chapter, enhance the state's economic well-being. In consequence of the benefits resulting to the public health, welfare and economy, it is hereby declared to be the policy of the state of Idaho to protect this natural resource by monitoring and controlling water pollution; to support and aid technical and planning research leading to the control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution. The director, in cooperation with such other agencies as may be appropriate, shall administer this chapter. It is the intent of the legislature that the state of Idaho fully meet the goals and requirements of the federal clean water act and that the rules promulgated under this chapter not impose requirements beyond those of the federal clean water act.

39-3603. GENERAL WATER QUALITY STANDARD AND ANTIDEGRADATION POLICY. The existing instream beneficial uses of each water body and the level of water quality necessary to protect those uses shall be maintained and protected. Where the quality of waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of this chapter, and the department's planning processes, along with appropriate planning processes of other agencies, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such reductions in water quality, the department shall assure water quality adequate to protect existing uses fully.

39-3625. DEFINITIONS.

(1) "Sewage treatment works" means any facility for the purpose of collecting, treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(2) "Community water system" means a public drinking water system that serves at least fifteen (15) service connections used by year-round residents or serves at least twenty-five (25) year-round residents.

(3) "Nonprofit noncommunity water system" means a public drinking water system that is not a community water system and is governed by section 501 of the Internal Revenue Code and includes, but is not limited to: state agencies, municipalities and nonprofit organizations such as churches and schools.

(3) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works or best management practices, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, and the inspection and supervision of the construction of sewage treatment

works, community public water systems, nonprofit noncommunity public water systems or best management practices.

(5) "Eligible construction project" means a project for construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or for a project for the application of best management practices as set forth in the approved state water quality plan, in related project areas:

(a) For which approval of the Idaho board of environmental quality is required under section 39-118, Idaho Code;

(b) Which is, in the judgment of the Idaho board of environmental quality, eligible for water pollution abatement assistance or for provision of safe drinking water, whether or not federal funds are then available therefor;

(c) Which conforms with applicable rules of the Idaho board of environmental quality;

(d) Which is, in the judgment of the Idaho board of environmental quality, necessary for the accomplishment of the state's policy of water purity as stated in section 39-3601, Idaho Code; and

(e) Which is needed, in the judgment of the Idaho board of environmental quality, to correct existing water pollution problems or public health hazards and to provide reasonable reserve capacity to prevent future water pollution problems or public health hazards or to provide for safe drinking water.

(6) "Municipality" means any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.

(7) "Board" means the Idaho board of environmental quality.

(8) "Department" means the Idaho department of environmental quality.

(9) "Director" means the director of the Idaho department of environmental quality.

(10) "Nondomestic wastewater" means wastewater whose source of contamination is not principally human excreta.

(11) "Best management practice" means practices, techniques or measures identified in the state water quality plan which are determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(12) "Nonpoint source pollution" means water pollution that comes from many varied, nonspecific and diffused sources and can be categorized by the general land disturbing activity that causes the pollution.

(13) "Training program" means any course of training established to provide sewage treatment plant operating personnel and public drinking water system personnel with increased knowledge to improve their ability to operate and maintain sewage treatment works and public drinking water systems.

39-3626 AUTHORIZATION OF GRANTS AND LOANS -- DESIGNATION OF ADMINISTERING AGENCY -- RESERVATION OF FUNDS FOR OPERATIONS -- CRITERIA -- PRIORITY PROJECTS -- ELIGIBLE PROJECTS.

39-3627 PAYMENTS BY STATE BOARD OF ENVIRONMENTAL QUALITY -- CONTRACTS WITH MUNICIPALITIES AND COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS -- RULES -- APPROVAL OF ATTORNEY GENERAL -- AUDIT OF PAYMENTS

39-3634. COTTAGE SITE DEFINED. -- "Cottage site" is defined as a state owned lot containing one (1) acre or less which is or may be leased by the state of Idaho primarily for recreational or homesite use by a lessee. [1970, ch. 191, § 1, p. 555.]

39-3635. COTTAGE SITE LEASES -- REQUIREMENTS -- CONSTRUCTION OF SEWAGE DISPOSAL FACILITIES - - CONNECTION TO WATER AND SEWER DISTRICT SYSTEMS -- PAYMENT OF CHARGES -- NOTIFICATION OF DEFAULTS -- SATISFACTION OF REQUIREMENTS.

(1) After the effective date of this act all cottage site leases authorized by the state of Idaho shall require that each lessee must construct, at his cost and expense, sewage disposal facilities, certified by the director of he department of health and welfare as adequate,as follows: For all new cottage or house construction completed after July 1, 1971 on any cottage site the certificate shall be issued prior to occupancy. Those cottages or houses existing on the cottage sites prior to the effective date of this act shall meet those standards require d by the director of the department of health and welfare for certification within two (2) years of the effective date of this act, unless a public or private sewage collection or disposal system is being planned or constructed in which case the director of the department of health and welfare may grant extensions on a year by year basis but not to exceed

three (3) such extensions for any one (1) cottage site. (c) Isolated dwellings on sites situated on mining, grazing or other similar types of state land board leases shall not be affected unless within two hundred (200) yards of any flowing stream or a lake.

(2) Wherever any cottage site is located within the boundaries of a district organized for water or sewer purposes, or a combination thereof, pursuant to the provisions of chapter 32, title 42, Idaho Code, as amended, the cottage site lessee shall connect his property to the sewer system of the district within sixty (60) days after written notice from the district to do so, provided, however, no cottage site lessee shall be compelled to connect his property with such sewer system unless a service line is brought by the district to a poi nt within two hundred (200) feet of his dwelling place. All cottage site leases hereafter issued shall require, as a condition of acceptance thereof by the lessee, that the lessee will connect his property to a district sewer system as required in this subsection (2). With respect to all cottage site leases issued subsequent to July 1, 1970, filing with the department issuing the lease of evidence of connection to the district sewer system as contemplated in this subsection (2) shall be conclusive evidence of compliance by the cottage site lessee with the requirements of subsection (1) of this section and of the provisions of the cottage site lease to provide sewage disposal facilities at the expense of the cottage site lessee. Each cottage site lessee whose cottage site is subject to connection to a district sewer system as required in this subsection (2) shall pay to the district to which the cottage site is required to be connected, in a timely manner and when due, all connection fees and charges, all monthly rates, tolls and charges, as provided by chapter 32 title 42, Idaho Code, as amended, and all special benefits payments in lieu of tax payments provided for in subsection (3) of this section.

(3) Notwithstanding that title to a cottage site remains in the state of Idaho, each cottage site lessee shall pay to any district operating a sewer system to which the cottage site is connected as provided in subsection (2) of this section, each year in t he same manner and at the same time as county taxes are paid and collected a sum of money in lieu of taxes equal to the sum which would have been paid had the cottage site been held in private ownership, hereinafter called special benefits payments. The special benefit payments shall be computed by applying the millage levy of the district to the cottage site in the ordinary course to the assessed valuation of the property as determined by the county assessor of the county in which the cottage site is located. No special benefits payments shall be imposed prior to January 1, 1980. The cottage site lessee shall h ave such rights of protest, hearings, and appeals with respect to the valuation of the cottage site for purposes of determining the special benefits payments as if such cottage site were held in private ownership. It shall be the duty of the county assessor to establish the value of each cottage site as compared to like property upon the request, in writing, of the district.

(4) Each water and sewer district shall immediately notify the department issuing a cottage site please of the failure of any cottage site lessee to connect to the district sewer system, or to pay any connection fee or charge, monthly rate, toll or charge, or any special benefit payments, all as required or provided for in subsection (3) of the section. Any such notification shall set forth the amount of any such fees, charges or payments which are delinquent.

(5) Approval, pursuant to the provisions of section 39-118, Idaho Code, by the department of health and welfare of the plans and specifications of a sewer system to be constructed, acquired, improved or extended by a water and sewer district shall, as to all cottage sites connected to the district sewer system, satisfy the requirements of section 39-3637, Idaho Code. The state of Idaho, its boards, agencies or departments, shall not be liable, directly or indirectly, for any connection fees and charges, monthly rates, tolls and charges, or special benefits payments charged to cottage site lessees beyond those fees or payments collected from new lessees pursuant to section 58-304A, Idaho Code, and placed in the revolving fund created by section 58 - 141A, Idaho Code.

39-3636. FAILURE TO PROVIDE SEWAGE DISPOSAL -- PENALTIES. Failure to provide certified sewage disposal as provided in section 39-3635 (1), Idaho Code, or failure to connect to a district sewer system or to pay, when due, any connection fee or charge, any monthly rate, toll or charge, or any special benefits payment, all as required and provided for in subsections (2) and (3) of section 39-3635, Idaho Code, shall result in the following:

(a) Forfeiture of lease to the state of Idaho after reasonable notice and hearing, as shall be prescribed in rules to be adopted by the department issuing the lease pursuant to the applicable provisions of chapter 52, title 67, Idaho Code, as now or hereafter in force.

(b) Loss of sewage treatment facility credit on any transfer of lease or

new lease of such site after notice and hearing before the department issuing such lease. The department issuing any cottage site lease, upon its own motion or upon receiving notice from a water and sewer district pursuant to the provisions of section 39-3635(4), Idaho Code, of the failure of a cottage site lessee to connect to a district sewer system or to pay any connection fee or charge, any monthly rate, toll or charge, or any special benefits payments, when due, is authorized to invoke either or both remedies at its discretion or may take such other action allowed by law to enforce the provisions of the lease and the requirements of section 39-3635, Idaho Code, that each cottage site lessee connect to a district sewer system and pay all fees, charges and payments when due.

39-3637. STATE BOARD OF ENVIRONMENTAL QUALITY -- RULES -- INSPECTION. The state board of environmental quality shall adopt reasonable rules and standards for the installation and operation of cottage site sewage treatment facilities, and shall provide adequate inspection services so as not to delay unreasonably the construction of any lessee. Duplicate originals of all certificates issued by the director of the department of environmental quality shall be filed with the director of the department issuing a cottage site lease. The director of the department of environmental quality shall maintain a site by site inventory of such sewage disposal systems that may exist. The inventory shall ascertain: If the existing system meets the board standards. If the system meets all standards and rules for cottage sewage disposal systems a certificate shall be issued immediately. If the system does not meet the board standards. In such case, the lessee shall be advised in writing of the actions necessary to meet the proper standards. A copy of such report shall be filed with the state agency granting the lease. The modifications, unless specifically exempted from the time limit, as provided in sections 39-3634 through 39-3637, Idaho Code, shall be completed within two (2) years of the date of the written notice.

39-3638. FINAL DETERMINATION BY ISSUING DEPARTMENT AUTHORIZED.-- In the event of dispute, unreasonable delay on the part of lessee or the department of health and welfare, the department issuing a cottage site lease ma upon notice and hearing, make a final determination consistent with control of water pollution and public health.

39-3639. CONTINUATION OF COTTAGE SITE LEASE PROGRAM.—

(1)The legislature of the state of Idaho recognizes that certain state lands are presently leased for cottage site uses and are subject to leases and contracts duly authorized by law. It is legislative intent to continue to recognize such leases. However, it is also legislative intent that no new or additional lands be platted, subdivided or leased for cottage site leases, unless and until the condition and precedents listed below have been met.

(2)No additional state lands shall be further platted or subdivided, nor any new cottage leases entered into, unless and until the following provisions have been met:

(a) The department of lands shall have completed a comprehensive planning process, as to its further participation in, and extension of, the cottage site lease program;

(b) The department of lands shall complete a comprehensive planning process as to the extension of cottage site leasing for that immediate geographic area;

(c) No new cottage site leases shall be entered into unless and until an adequate water system and an adequate sewage collection and treatment system have been installed. Both of these systems shall meet applicable state health standards and rules.

(i) the costs for providing these systems shall be incorporated into the annual lease rates for the newly created serviced lots, unless other specific provisions for payment have been required by the state board of land commissioners.

(ii) (ii) As an alternate means of securing the necessary funds for the construction of water and sewer systems which must meet state standards and rules, the state board of and commissioners may include as a condition of the new lease t he requirement that the lessee must prepay his share of the construction costs of the water and sewer syste m. In all cases, however, such prepayment shall be made, and adequate water and sewer systems shall be installed and in operation before such cottage sites may be inhabited.

(3) The provisions of subsection (1) herein shall not apply to unimproved lots within cottage subdivisions in which at least eighty per cent (80%) of the lots already have cottages upon them.

CHAPTER 37 ANATOMICAL TISSUE, ORGAN, FLUID DONATIONS

CHAPTER 38 MINORS -- CONSENT TO TREATMENT
CHAPTER 39 STERILIZATION
CHAPTER 40 MOBILE HOMES AND RECREATIONAL VEHICLES -- STANDARDS
CHAPTER 41 IDAHO BUILDING CODE ACT
CHAPTER 42 RECREATIONAL VEHICLES AND PARK TRAILERS
CHAPTER 43 MEDICAL CONSENT
CHAPTER 44 HAZARDOUS WASTE MANAGEMENT
CHAPTER 45 NATURAL DEATH ACT
CHAPTER 46 IDAHO DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES ACT
CHAPTER 47 RESPITE CARE SERVICES [REPEALED]
CHAPTER A47 PERSONAL CARE SERVICES -- [AMENDED AND REDESIGNATED]
CHAPTER 48 IMMUNIZATION
CHAPTER 49 IDAHO HEALTH PLANNING ACT
CHAPTER [50] 49 EQUAL OPPORTUNITY FOR DISPLACED HOMEMAKER ACT
CHAPTER 51 FAMILY SUPPORT AND IN-HOME ASSISTANCE
CHAPTER 52 DOMESTIC VIOLENCE PROJECT GRANTS
CHAPTER 53 ADULT ABUSE, NEGLECT AND EXPLOITATION ACT
CHAPTER 54 ARTIFICIAL INSEMINATION
CHAPTER 55 CLEAN INDOOR AIR
CHAPTER 56 PERSONAL CARE SERVICES
CHAPTER 57 PREVENTION OF MINORS' ACCESS TO TOBACCO
CHAPTER 58 HAZARDOUS WASTE FACILITY SITING
CHAPTER 59 IDAHO RURAL HEALTH CARE ACCESS PROGRAM
CHAPTER 60 CHILDREN'S TRUST FUND
CHAPTER 61 -- [RESERVED]
CHAPTER 62 PCB WASTE DISPOSAL
CHAPTER 63 DOMESTIC VIOLENCE CRIME PREVENTION
CHAPTER 64 CLEAN LAKES ACT
CHAPTER 65 WASTE TIRE DISPOSAL
CHAPTER 66 BIG PAYETTE LAKE WATER QUALITY ACT
CHAPTER 67 -- [RESERVED]
CHAPTER 68 -- [RESERVED]
CHAPTER 69 -- [RESERVED]
CHAPTER 70 SALE AND DISPOSAL OF BATTERIES
CHAPTER 71 HAZARDOUS SUBSTANCE EMERGENCY RESPONSE ACT
CHAPTER 72 IDAHO LAND REMEDIATION ACT
CHAPTER 73 -- [RESERVED]
CHAPTER 74 IDAHO SOLID WASTE FACILITIES ACT
CHAPTER 75 ADOPTION AND MEDICAL ASSISTANCE
CHAPTER 76 PUBLIC DRINKING WATER SYSTEM LOANS

39-7601. AUTHORIZATION OF LOANS. The director is hereby authorized to make loans at or below market interest rates, as funds are available, to any eligible public water system to assist the public water system or which will facilitate their compliance with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of this chapter.

CHAPTER 77 VOLUNTEER HEALTH CARE PROVIDER IMMUNITY
CHAPTER 78 TOBACCO MASTER SETTLEMENT AGREEMENT
CHAPTER 79 LOCAL OPTION SWINE FACILITIES SITING ACT

39-7904. SITE APPROVAL REQUIRED -- SITE APPROVAL IS SUPPLEMENTAL -- LOCAL OPTION -- LOCAL ACTION REQUIRED FOR DEPARTMENT ACTION. No person may construct or expand a large swine facility regulated by this chapter without first obtaining site approval from the director as provided in this chapter.

(1) The site approval required by this chapter for construction or expansion of a large swine facility is required in addition to requirements of any rules of the department. Further, the site approval required by this chapter must be obtained in addition to any other license, permit or approval required by law or rule.
(2) This chapter does not preempt the local regulation of swine facilities. This chapter provides boards of county commissioners and governing bodies of cities with an optional procedure for siting swine facilities. If boards of county commissioners and governing bodies of cities do not exercise their option to comply with this chapter, they are not subject to its provisions and may exercise individual authority to accept, regulate or reject swine facilities independently of this chapter.
(3) This chapter applies only if the board of county commissioners or governing body of a city, whichever has jurisdiction over the site for a proposed swine facility, chooses to comply with this chapter. If a board of county commissioners or a governing body of a city with jurisdiction chooses not to comply with this chapter, the department is not required to take any action under this chapter.
(4) Boards of county commissioners and governing bodies of cities that choose to comply with this chapter shall signify compliance by resolution or ordinance communicated to the director in writing.
(5) If a board of county commissioners or a governing body of a city chooses to comply

with this chapter, the department does not have to issue a determination or notice of environmental suitability of facility location pursuant to its rules for swine facilities, IDAPA 16.01.09.

39-7905. APPLICATION -- FACILITIES REGULATED. The following swine facilities must obtain site approval under this chapter: (a)New swine facilities having a one-time animal unit capacity of twenty thousand (20,000) or more animal units; and (b) Existing swine facilities that expand their one-time animal unit capacity to twenty thousand (20,000) animal units or more.

(1) Two (2) or more swine facilities under common owners, operators or those with whom the owners or operators contract or are located within the same county or within five (5) miles of each other shall be considered, for purposes of licensing, to be a single facility regulated under this chapter, even though separately their capacity is less than twenty thousand (20,000) animal units. In each case, the director shall determine whether one (1) or multiple site approvals are required.

(2) (a) Existing swine facilities with a one-time animal unit capacity of twenty thousand (20,000) animal units built and in operation one (1) year or more before the original effective date of this chapter are exempt from the requirement to obtain a site approval pursuant to this chapter unless they expand as provided in this section. However, such facilities shall register with the director within three (3) months after the original effective date of this chapter. The director shall determine the information that must be submitted as part of their registration.

(b) Existing swine facilities required in this subsection to register with the director shall submit a nutrient management plan and closure plan to the director for approval within two (2) years of the original effective date of this chapter in accordance with rules of the department. An application fee shall not be required unless the facility is expanding.

39-7907. LOCATION GUIDELINES. This section provides location guidelines for swine facilities regulated by this chapter. Where the location guidelines provide a specific setback distance, that distance is the minimum setback distance that may be imposed. Further setback distances shall be imposed as circumstances require.

(1) A swine facility regulated by this chapter shall not: (a) Locate its closest waste facility within at least two (2) miles of any occupied residence not owned or leased by the owner or operator of the swine facility; (b) Land apply liquid animal waste within at least one (1) mile of the nearest corner of an occupied residence not owned or leased by the owner or operator of the swine facility.

(2) The setback distances provided in subsection (1) of this section do not apply if the affected property owner executes a written waiver with the owner or operator of the swine facility, under terms and conditions that the parties may negotiate. The written waiver is effective when recorded in the offices of the recorder of deeds in the county in which the property is located. The recorded waiver shall preclude enforcement of the setback distances contained in subsection (1) of this section. A change in ownership of the applicable property or change in ownership of the swine facility does not affect the validity of the waiver.

(3) All distances between occupied residences and swine facilities shall be measured from the closest corner of the walls of the occupied residence to the closest point of the nearest waste structure or waste facility, as defined by the director.

(4) No liquid animal waste may be land applied within at least one hundred (100) feet of an existing public or private drinking water well.

(5) The minimum distance from a waste structure or waste facility to a domestic well, public well or public water source shall be at least one (1) mile.

(6) Further, swine facilities shall not be located: (a) In areas designated by the United States fish and wildlife service or the Idaho department of fish and game as critical habitat for endangered or threatened species of plants, fish or wildlife; (b) So as to be at variance with any locally adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance. If no land use plan has been adopted by the local government which would have land use jurisdiction pursuant to chapter 65, title 67, Idaho Code, the recommendations of the panel approving a site shall contain an analysis of the requirements and guidelines provided in this chapter. The analysis shall be accompanied by findings and conclusions, entered by the local government with jurisdiction after the local government has held a public hearing in accord with section 67-6509, Idaho Code, that the public interest would be served by locating a swine facility on the site for which approval is sought; (c) No nearer than one (1) mile to any local, state or national park, or land reserved or withdrawn for scenic or natural use; and (d) No nearer than two (2) miles to a school, church, hospital or community center.

(7) A swine facility active unit shall not be located:

(a) Within a one hundred (100) year flood plain;

(b) Within five hundred (500) feet upstream of a perennial stream or river;

(c) Within one thousand (1,000) feet of any perennial lake or pond;

(d) So as to cause any measurable impact on water quality limited streams;

(e) Within a wetland;

(f) Within two hundred (200) feet to the property line of adjacent land;
(g) Within two hundred (200) feet of a holocene fault or adjacent to geologic features which could compromise the structural integrity of a swine facility active unit unless the owner or operator demonstrates to the director that an alternative setback distance of less than two hundred (200) feet will prevent damage to the structural integrity of the swine facility unit and will be protective of human health and the environment. For the purposes of this subsection:
  (i) "Fault" means a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side;
  (ii) "Displacement" means the relative movement of any two (2) sides of a fault measured in any direction; (iii) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.
(h) Within seismic impact zones, unless the owner or operator demonstrates to the director that all swine facility active units and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and notify the director that it has been placed in the operating record. For the purposes of this section:
  (i) "Seismic impact zone" means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed one-tenth (0.10g) in two hundred fifty (250) years;
  (i) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment;
  (ii) "Lithified earth material" means all rock, including all naturally
occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.
(i) On any site whose natural state would be considered unstable in that its undisturbed character would not permit establishment of a swine facility without unduly threatening the integrity of the design due to inherent site instability;
(j) Where the integrity of the site would be compromised by the presence of ground
water which would interfere with construction or operation of the active unit.

39-7908. SITE REVIEW PANELS ESTABLISHED.

(1) A site review panel shall be established to ensure public input in the siting process and to recommend to the director site approval, approval with conditions or rejection.
(2)A panel shall consist of eight (8) members to be appointed as follows:
  (a) Three (3) members shall be the director of the department of environmental quality or his designee, the director of the department of water resources or his designee, and the director of the department of agriculture or his designee.
  (b) One (1) member shall be a public member appointed by the governor. The public member shall be an environmental professional, shall serve as chairman of the panel and shall be a voting member. A member who is a public member shall be appointed to serve on site review panels only until the particular site application subject to their review is approved, or until the application is rejected and is no longer subject to their review.
  (c) Two (2) members shall be appointed by the city council of the city located closest to, or in which the swine facility is proposed to be located or expanded, provided the governing body of the city has signified compliance with this chapter as provided in section 39-7903, Idaho Code. At least one (1) shall be a resident of the city. However, if two (2) cities are equidistant from the proposed or expanding swine facility, plus or minus five (5) miles, the city council of each city shall appoint one (1) member each to the site review panel, each of whom shall be a resident of the city appointing them. The members serving pursuant to this subsection shall serve until the particular site application subject to their

review is approved or it is rejected and is no longer subject to their review.

(d) Two (2) members shall be appointed by the county commission and be residents of the county where the swine facility is proposed to be located or expanded, provided the board of county commissioners has signified compliance with this chapter as provided in section 39-7903, Idaho Code. The members serving pursuant to this subsection shall serve until the particular site application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(e) A person nominated to represent a city or county shall not have a conflict of interest, as that term is defined in section 59-703, Idaho Code, or derive any economic gain as that term is defined in section 59-703, Idaho Code, from the location of the proposed or expanding swine facility.

(3) The director shall notify the city council of the nearest city, or cities if two (2) cities are within five (5) miles of the site of the proposed facility, and the board of county commissioners in which the site is located, of a site application filed with the department and shall instruct the city or cities and county to appoint the necessary members to a panel.

(4) A majority of members of the panel shall constitute a quorum for the transaction of business of the panel and the concurrence of a majority of the panel shall constitute a legal action of the panel, provided that no meeting of the panel shall occur unless there are at least as many members present representing the city and county as there are representing the state and the public as appointed pursuant to subsections (2)(a) and (b) of this section. All meetings of the panel shall be conducted pursuant to the state open meeting law.

(5) The director shall make staff available to assist the panel in carrying out its responsibilities.

(6) Members of the panel who are not state employees shall be entitled to receive compensation as provided in section 59-509(b), Idaho Code.

39-7909. SITING APPLICATION -- FEE -- RULES.

(1) A site application shall include, in a format set forth by the director and when determined applicable by the director, the following information:

(a) Name, mailing address and phone number of the facility owner;

(b) Name, mailing address and phone number of the facility operator;

(c) Name and mailing address of the facility;

(d) Legal description of the facility location;

(e) The legal structure of the entity owning the facility, including the names and addresses of all directors, officers, registered agents and partners;

(f) The names and locations of all swine facilities owned and/or operated by the applicant within the last ten (10) years;

(g) The one-time animal unit capacity of the facility;

(h) The type of animals to be confined at the facility;

(i) Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for a permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho department of water resources which, if approved, will supply adequate water for the proposed operation;

(j) The facility's biosecurity and sanitary standards.

(2) A facility plan. Plans and specifications for the facility's animal waste management system that include the following information:

(a) Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: (i) Layout of the facility, including buildings and animal waste management system; (ii) The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; (iii) The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities which are within a two (2) mile radius of the facility; and (iv) Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the facility.

(b) Facility specifications including:

(i) A site plan showing:

1. Building locations;
2. Waste facilities;
3. All waste conveyance systems; and
4. All irrigation systems used for land application, including details of approved water supply protection devices.

(ii) Building plans showing:
1. All wastewater collection systems in housed units;
2. All freshwater supply systems, including details of approved water supply protection devices;
3. Detailed drawings of wastewater collection and conveyance systems and containment construction; and
4. Detailed construction and installation procedures.

(3) Site characterization. A characterization of the facility and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, that includes the following information:
(a) A description of monitoring methods, frequency and reporting components related to either leak detection systems and/or ground water monitoring wells;
(b) The climatic, hydrogeologic and soil characteristics;
(c) The depth to water and a potentiometric map for the uppermost and regional aquifer;
(d) The vertical and horizontal conductivity, gradient and ground water flow direction and velocity;
(e) Estimates of recharge to the uppermost aquifer;
(f) Information which characterizes the relationship between the ground water and adjacent surface waters; and
(g) A summary of local ground water quality data.

(4) A nutrient management plan. A plan prepared by a certified planner demonstrating compliance with the nutrient management standard for land application.

(5) A plan for meeting standards for heavy metals as those provided in 40 CFR section 503, subchapter O.

(6) A plan for disposal of dead animal carcasses.

(7) An air quality management plan.

(8) A closure plan. A plan describing the procedures for final closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes:
(a) The estimated length of operation of the facility;
(b) A description of the procedures, methods and schedule to be implemented at the facility for final disposal, handling, management and/or treatment of all animal waste;
(c) A plan for permanent disposal of residual solid waste.

(9) Other information. An applicant shall provide any other information relative to this section and deemed necessary by the director to assess protection of human health and the environment, including information showing that:
(a) The harm to scenic, public health, environmental, private property, historic, cultural or recreational values is not substantial or can be mitigated;
(b) The risk and impact of accident during transportation of animal waste or animal carcasses is not substantial or can be mitigated. Dead animals shall be removed from the facility for rendering, cremation, burial, composting or other disposal in accordance with IDAPA 02.04.03, "Rules of Department of Agriculture Governing Animal Industry," section 050, "Dead Animals, Movement, Disposal";
(c) The impact on local government is not adverse regarding health, safety, cost and consistency with local planning and existing development or can be mitigated;
(d) The facility or operations associated with the facility do not create a public health hazard or nuisance conditions including odors;
(e) The applicant has the financial ability to construct, operate and close the facility.

(10) Within thirty (30) days after receipt of the application, the director shall determine whether it is complete. If it is not complete, the director shall notify the applicant and state the areas of deficiency.

(11) The application shall be accompanied by a fee. The director shall establish by rule the scale for determining the application fee. The fee shall be based on the cost to the site review panel of reviewing the application. The scale shall be based on characteristics including the site size, projected waste volume, and hydrogeological and atmospheric characteristics surrounding the site. Fees received pursuant to this section may be expended by the director to pay the actual, reasonable and necessary costs incurred by the department in acting upon an application.

39-7911. FINANCIAL ASSURANCE FOR CLOSURE AND REMEDIATION. All swine facilities regulated by section 39-104A, Idaho Code, and this chapter shall provide financial assurances demonstrating financial capability to meet requirements for closure of the facilities and remediation. Requirements for financial assurances shall be determined by the agency as set forth in rule. Financial assurances may include any mechanism or combination of mechanisms meeting the requirements established by agency rule including, but not limited to, surety bonds, trust funds, irrevocable

letters of credit, insurance and corporate guarantees. The mechanism(s) used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must ensure that the funds necessary to meet the costs of closure and remediation will be available whenever the funds are needed. The director may retain financial assurances for up to five (5) years after closure of a facility to ensure proper closure and remediation, as defined by rule.

(1) Nothing in this section prohibits the boards of county commissioners of any county or the governing body of any city from adopting regulations that are more stringent or that require greater financial assurances than those imposed by the department of environmental quality.

39-7916. CONFLICTS CLAUSE. If a conflict arises between this chapter and rules of the department regulating swine facilities, the most restrictive provision shall apply.

CHAPTER 80 UNIFORM PUBLIC SCHOOL BUILDING SAFETY
CHAPTER 81 BASIN ENVIRONMENTAL IMPROVEMENT ACT
CHAPTER [82] 81 IDAHO SAFE HAVEN ACT
CHAPTER [83] 81 [REPEALED] TRAUMA CARE
CHAPTER 84 TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT
CHAPTER [85] 84 LAKE PEND OREILLE, PEND OREILLE RIVER, PRIEST LAKE AND PRIEST RIVER COMMISSION

TITLE 40 HIGHWAYS AND BRIDGES
TITLE 41 INSURANCE
TITLE 42 IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 32 WATER AND SEWER DISTRICTS

42-3201. DECLARATION OF PURPOSE. It is hereby declared that the organization of water and sewer districts, having the purposes and powers provided in this act, will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants of said districts.

42-3202A. RECREATIONAL WATER AND/OR SEWER DISTRICT -- DEFINITION. A recreational water and/or sewer district is one in which less than a majority of the landowners or state lessees or federal permittees in the district sought to be created reside within the district and at least fifty per cent (50%) of the land area of said district is in a natural state, or used for agricultural purposes. The actual or potential development anticipated for said district shall be predominantly recreational in character. The district or areas near the district shall meet one or more of the following criteria: have unique scenic value; man-made or natural recreational facilities such as waterways, marinas, ski slopes, wilderness areas; provide open space; and be removed from large, densely populated urban areas. Recreational water and/or sewer districts shall provide services and/or facilities to landowners or state lessees or federal permittees. The proposed district shall be in the best interests of the state of Idaho in that the benefits derived by property owners shall effectuate the preservation and development of recreational opportunities within the state

42-3202B. WATER AND/OR SEWER DISTRICTS MEETING THE CRITERIA OF RECREATIONAL WATER AND/OR SEWER DISTRICTS -- CREATION. Each petition filed with the clerk of the district court pursuant to the provisions of this chapter shall be verified and the petitioner shall certify or prove to the satisfaction of the court that the district sought to be created is a recreational water and/or sewer district under the terms of section 42-3202A, Idaho Code. The court decree pursuant to the provision of section 42-3207, Idaho Code, determining the nature of such district pursuant to the petitioner's prayer shall be conclusive for this and all other purposes. If the water and/or sewer district sought to be created is a recreational water and/or sewer district as defined in section 42-3202A, Idaho Code, such recreational water or sewer district shall be created in the manner provided in chapter 32, title 42, Idaho Code, except that the term, "qualified elector" shall mean any natural person who is qualified to vote in an Idaho general election, and who is an actual resident of the district, or who is an actual resident of Idaho, owning land within the boundaries of the district or area to be included within the district, or is a lease holder of a state recreational lease, or is a permit holder of a federal recreational use permit and pays personal property tax on improvements on the lease or permit area, irrespective of his or her place of residence in Idaho. The holder or holders of a bona fide contract to purchase any land within the proposed district whose names appear upon the next preceding county assessment roll for the payment of taxes on the land shall be deemed an owner of land for the purposes of this section.

42-3202C. CHANGING STATUS OF DISTRICT. The board of directors of a water and/or sewer district may, at any time after the formation of such district, determine that the district qualifies as a recreational water and/or sewer district as defined under section 42-3202A, Idaho Code, and that it is in the best interest of the district to petition the court to change the district's status to a recreational water and/or sewer district. Said petition must be filed in the office of the clerk of the court vested with jurisdiction, in a county in which the major

part of the real property in the existing district is situated. The petition must be signed by the chairman of the district's board of directors and shall set forth the following:

(1) The name of the existing district, date on which said district was formed and a general description of the district's boundaries.

(2) That the petition was initiated after a majority vote of the board of directors that it is in the best interest of the district to change its status to a recreational water and/or sewer district.

(3) The criteria the district meets under section 42-3202A, Idaho Code, thereby qualifying it as a recreational water and/or sewer district.

(4) A prayer for changing the status of the existing district to that of a recreational water and/or sewer district. Upon filing of the petition, the court shall by order fix a time and place for hearing as provided in section 42-3206, Idaho Code. Upon the hearing of said petition any interested persons or corporations may appear before said court and make objections to the proposed status change. Further, if it then shall appear that the petition for a change in status has been signed and presented as hereinabove provided and the allegations of the petition are true, the court shall by order duly entered of record, grant the prayed for change of status of the existing district.

42-3203. JURISDICTION TO ESTABLISH DISTRICTS. The district court sitting in and for any county in this state, or any judge thereof in vacation, is hereby vested with jurisdiction, power and authority to establish districts which may be entirely within or partly within and partly without the judicial district in which said court is located.

42-3204. PETITION -- CONTENTS -- AMENDMENTS. The organization of a district shall be initiated by a petition filed in the office of the clerk of the court vested with jurisdiction, in a county in which the major part of the real property in the proposed district is situated. The petition shall be signed by not less than ten per cent (10%) of the taxpayers of the district, who pay a general tax on real property owned by him or her within the district; provided, however, that no single tract or parcel of property containing five (5) acres or more may be included in any district organized under this act without the consent of the owner or owners thereof. The petition shall set forth:

(1) The name of the proposed district consisting of a chosen name preceding the words, "water district" or "sewer district," or "water and sewer district."

(2) A general description of the improvements to be constructed or installed within and for the district.

(3) The estimated cost of the proposed improvements.

(4) A general description of the boundaries of the district or the territory to be included therein, with such certainty as to enable a property owner to determine whether or not his property is within the district.

(5) A prayer for the organization of the district.

No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory, or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed, shall be considered by the court the same as though filed with the first petition placed on file.

42-3212. GENERAL POWERS OF BOARD. For and on behalf of the district the board shall have the following powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued, and be a party to suits, actions and proceedings;

(d) Except as otherwise provided in this chapter, to enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, and contracts with corporations, public or private, municipalities, or governmental subdivisions, and to cooperate with any one (1) or more of them in building, erecting or constructing works, canals, pipelines, sewage treatment plants, and other facilities within or without the district. Except in cases in which a district will receive aid from a governmental agency, a notice shall be published for bids on all construction contracts involving an expense of fifteen thousand dollars ($15,000) or more for labor, materials and equipment, which sum shall exclude design costs, bid advertising and related bidding expenses. The district may reject any and all bids, and if it shall appear that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do;

(e) To borrow money and incur indebtedness and evidence the same by certificate, notes or debentures, and to issue bonds, in accordance with the provisions of this chapter;
(f) To acquire, dispose of and encumber real and personal property, water, water rights, water and sewage systems and plants, and any interest therein, including leases and easements within or without said district;
(g) To refund any bonded indebtedness of the district without an election; provided, however, that the obligations of the district shall not be increased by any refund of bonded indebtedness. Otherwise, the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds;
(h) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district improvements therein or therefor;
(i) To hire and retain agents, employees, engineers and attorneys;
(j) To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for public use to take any property necessary to the exercise of the powers herein granted, both within and without the district;
(k) To construct and maintain works and establish and maintain facilities across or along any public street or highway, and in, upon, or over any vacant public lands, which public lands are now, or may become, the property of the state of Idaho, and to construct works and establish and maintain facilities across any stream of water or watercourse, and to maintain access to facilities and works by the removal of snow from roads and lands; provided, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof;
(l) To fix and from time to time to increase or decrease water and sewer rates, tolls or charges for services or facilities furnished by the district, and to pledge such revenue for the payment of any indebtedness of the district. The board shall fix rates, tolls and charges and the time or times for the payment thereof. All such rates, tolls and charges not paid within thirty (30) days after the date fixed for the payment thereof shall become delinquent; the board shall certify all such delinquent rates, tolls and charges to the tax collector of the county by the district, not later than the first day of August and shall be, by said tax collector, placed upon the tax roll and collected in the same manner and subject to the same penalties as other district taxes; provided, however, that special assessments certified to the tax collector which are placed on property qualifying for a hardship exemption may be returned to the taxing district from which they originated if the special assessments are not paid within three (3) years. The date of priority of such lien shall be the date upon which such charge becomes delinquent. The board shall shut off or discontinue service for delinquencies in the payment of such rates, tolls or charges, or in the payment of taxes levied pursuant to this chapter, and prescribe and enforce rules and regulations for the connection with and the disconnection from properties of the facilities of the district. For health and sanitary purposes the board shall have the power to compel the owners of inhabited property within a sewer district to connect their property with the sewer system of such district, and upon a failure so to connect within sixty (60) days after written notice by the board so to do the board may cause such connection to be made and a lien to be filed against the property for the expense incurred in making such connection, provided, however, that no owner shall be compelled to connect his property with such system unless a service line is brought, by the district, to a point within two hundred (200) feet of his dwelling place;
(m) To adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district;
(n) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

42-3213. TAXES. In addition to the other means providing revenue for such districts as herein provided, the board shall have power and authority to levy and collect ad valorem taxes on and against all taxable property within the district.

42-3214. LEVY AND COLLECTION OF TAXES. To levy and collect taxes as herein provided, the board shall, in each year, determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of assessed valuation of taxable property within the district, and with other revenues will raise the amount required by the district annually, to supply funds for paying expenses of organization and the costs of construction, operating and maintaining

the works and equipment of the district, and promptly to pay in full, when due, all interest on the principal of bonds and other obligations of the district, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in section 42-3215. The board shall, on or before the first day of September of each year, certify to the board of county commissioners of each county within the district, or having a portion of its territory within the district, the rate so fixed with directions that at the time and in the manner required by law for levying taxes for county purposes, such board of county commissioners shall levy such tax upon the assessed valuation of all taxable property within the district, in addition to such other taxes as may be levied by such board of county commissioners at the rate so fixed and determined.

42-3215. LEVIES TO COVER DEFAULTS AND DEFICIENCIES. The board in certifying annual levies as herein provided, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district are not sufficient punctually to pay the annual instalments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, then the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, such taxes shall be made and continue to be levied until the indebtedness of the district shall be fully paid.

42-3217. SINKING FUND. Whenever any indebtedness has been incurred by a district, it shall be lawful for the board to levy taxes and collect revenue for the purpose of creating a sinking fund in such amount sufficient to meet the payments of principal and interest on such indebtedness as the same matures, and to constitute a sinking fund for the payment of the principal amount of the indebtedness within thirty (30) years from the time of contracting the indebtedness evidenced thereby and in accordance with the provisions made for the payment of the principal and interest of such indebtedness and also to constitute a sinking fund for payment of the principal thereof, and theretofore provided by resolution pursuant to section 42-3222, Idaho Code, and as required by the constitution and laws of the state of Idaho.

42-3218. INCLUSION OF PROPERTY PETITIONED -- HEARING -- ORDER -- ANNEXATION OF PROPERTY PETITIONED -- HEARING -- ORDER -- ANNEXATION OF PROPERTY BY ELECTION -- ELECTION PROCEDURE. The boundaries of any district organized under the provisions of this chapter may be changed in the manner herein prescribed, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property, or any of its rights or privileges whatsoever; nor shall it affect or impair or discharge any contract, obligation, lien or charge for or upon which it might be liable or chargeable had any such change of boundaries not been made.

(a) The owners of real property may file with the board a petition, in writing, praying that such real property be included in the district. The petition shall describe the property owned by the petitioners, and such petition shall be deemed to give assent of the petitioners to the inclusion in said district of the property described in the petition, and shall be accompanied by a reasonable filing fee in an amount to be determined by the board. Such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged. The secretary of the board shall cause notice of filing of such petition to be given and published in the county in which the property is situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands mentioned and the prayer of such petitioners; giving notice to all persons interested to appear at the office of the board at the time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board shall at the time and place mentioned or at such time or times to which the hearing may be adjourned, proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause why said petition should not be granted. The failure of any person to show cause in writing shall be deemed as an assent on his part to the inclusion of such lands in the district as prayed in the petition. If the petition is granted, the board shall make an order to that effect and file the same with the clerk of the district court together with a copy of the petition and proof of publication certified by the secretary of the board. The clerk of the district court shall present the same to the court and upon order of the court the property shall be included in the district.

(b) The territory adjoining or in close proximity to and in the same county with any district created under the provisions of this chapter may be annexed to the district by either of the following procedures:

(1) A petition for annexation of real property described in such petition, which has been signed by the owners of not less than sixty

per cent (60%) of the area in land within the territory to be annexed, and which contains the separate property descriptions of such petitioners, and which is acknowledged in the same manner that conveyances of land are required to be acknowledged, accompanied by a reasonable filing fee in an amount to be determined by the board, may be filed with the board. Upon filing with the board of such a petition, the secretary of the board shall cause notice of filing of such petition to be given and published in the county in which the property is situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands mentioned and the prayer of such petitioners; giving notice to all persons interested, including the staff and employees of said district and anyone designated by said district, to appear at the office of the board at the time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board shall at the time and place mentioned or at such time or times to which the hearing may be adjourned, proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause why said petition shall not be granted. The failure of any person to show cause in writing shall be deemed as an assent to the annexation of such lands into the district as prayed in the petition. The board shall have full discretion to determine if the petition shall be granted. If the petition is granted, the board shall make an order to that effect and file the same with the clerk of the district court together with a copy of the petition and proof of publication certified by the secretary of the board. The clerk of the district court shall present the same to the court and upon order of the court the property shall be included in the district.

(2) Upon filing with the board of a petition signed by registered voters owning real property residing in the territory to be annexed, who constitute at least twenty per cent (20%) of the taxpayers in such territory, praying for an election to determine if annexation shall be made of property designated in such petition, together with payment of a reasonable filing fee in an amount to be determined by the board, the board shall cause notice of filing of such petition to be given and published in the county in which the property is situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands to be annexed and the prayer of such petition; giving notice to all persons interested, including the staff and employees of said district and anyone designated by said district to appear at the office of the board at the time named in said notice and show cause in writing, if any they have, why the petition shall not be granted. The board shall at the time and place mentioned or at such time or times to which the hearing may be adjourned, proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause why said petition shall not be granted. The board shall have full discretion to determine if the petition shall be granted, and if such petition is granted, the board shall direct that an election be held, subject to the provisions of section 34-106, Idaho Code. The election shall be conducted in the same manner as general elections in this state, except that the board shall establish as many voting places within such territory proposed to be annexed as are by the board deemed necessary and shall define the boundaries of such voting places. The board shall appoint three (3) judges of election for each voting place, one (1) of whom shall be designated by the board to be the clerk of such election precinct. Each elector shall be registered as required by the general election laws and shall have resided within the area to be annexed for thirty (30) days. The secretary of the board of directors shall publish notice of the time and place of such election, in accordance with the provisions of section 34-1406, Idaho Code. The notice shall particularly describe the property to be annexed, the name of the district to which the territory is proposed to be annexed, and the terms and conditions prescribed by the board under which the property may be annexed. The notice shall designate the places in the territory where the election will be held, and shall require the voters to cast ballots which shall contain the words: For annexation to .... District. Against annexation to .... District. The judges of the election shall make their return thereof to the board of directors of the district, which shall canvass the returns and render a statement of the results of the election on the records of the board. If the majority of the votes cast favor annexation, the board shall enter an order annexing the property described in the notice of election and upon the filing of a copy thereof with the clerk of the district court, and upon order of the court, the territory shall thereupon become annexed to the district and shall thenceforth be a part of the district.

(c) In all proceedings for inclusion or annexation hereunder, the board shall have the power to prescribe terms and conditions under which said property may be included in the district, including the condition that such property may only be annexed or included within the district if the property is also established as a water or sewer subdistrict of the district, pursuant to sections 42-3218A through 42-3218D, Idaho Code, and may be required to pay the district its pro rata share of construction costs theretofore incurred by the district pursuant to any bond issue theretofore made or otherwise; provided, however, that such terms and conditions shall be announced by the board at or before the hearing to be held pursuant to subparagraphs (a) and (b) above. Within ten (10) days of the announcement of the terms and conditions under which the property may be included the majority of the petitioners filing petitions under the provisions of subparagraphs (a) or (b) may withdraw their petitions, and no further proceedings shall thereafter be had by the board upon such petitions.

(d) All public streets, roads, highways or alleys upon or within which is situated any part of the operative system or equipment of the district and all public streets, roads, highways and alleys which abut against or touch property annexed or to be annexed to the district, to the extent they abut against or touch such property and are not included in a different district, shall be deemed to be included in the district as a part of the annexation and shall be included in the legal description and map which the district must file in the offices of the county assessor, county recorder and the state tax commission as required by section 63-215, Idaho Code; provided, however, that upon application by the district to the state tax commission, if the commission finds after consultation with the county assessor and the county recorder that exemption from the requirements of this subparagraph (d) will not unduly burden state and local tax administration, the commission by order may exempt the district from the requirements of this subparagraph (d), but the district shall be required to comply with section 63-215, Idaho Code.

42-3218A. SUBDISTRICTS -- AUTHORITY TO ESTABLISH -- ELECTION. The board of directors of any water or sewer district organized under the provisions of chapter 32, title 42, Idaho Code, may at any time, on their own motion, call an election to submit to the qualified electors of a proposed water or sewer subdistrict the question of the creation of a water or sewer subdistrict. The election shall be called, held, and conducted pursuant to the provisions of chapter 32, title 42, Idaho Code. The proceedings calling the election shall set forth the boundaries of the proposed water or sewer subdistrict and shall provide for the submission of the question of the creation of the water or sewer subdistrict to the qualified electors residing within the proposed boundaries of the water or sewer subdistrict. No proposition for the creation of a water or sewer subdistrict shall be determined to have carried unless the proposition shall receive a majority of the votes cast. Whenever the creation of more than one (1) water or sewer subdistrict is submitted at the same election, separate ballots and separate propositions shall be used in voting on the question of creating each water or sewer subdistrict.

42-3218B. ESTABLISHMENT. Whenever a proposition for the creation of a water or sewer subdistrict shall have been approved in the manner set forth in section 42-3218A, Idaho Code, the board of directors of the water or sewer district shall enter in the minutes of the board an order providing for the establishment and creation of the water or sewer subdistrict setting forth therein the legal description of the boundaries thereof, and shall designate therein a name for such water or sewer subdistrict. Within ten (10) days after the entry of the order creating a water or sewer subdistrict, the board of directors shall certify the fact of the creation of the water or sewer subdistrict to the board of county commissioners of each county in which any part of the water or sewer subdistrict is located, by the filing of a certified copy of the order of the board of directors creating and establishing the water or sewer subdistrict.

42-3218C. NATURE AND POWERS. Each water or sewer subdistrict created and established as provided in sections 42-3218A through 42-3218D, Idaho Code, shall be a political subdivision of the state of Idaho. The board of directors entering the order creating and establishing a water or sewer subdistrict shall be the governing body of all water or sewer subdistricts created by the board, and shall possess those powers as provided in chapter 32, title 42, Idaho Code, on behalf of the water or sewer subdistrict, including the power to order, conduct and hold all elections in water or sewer subdistricts for the purpose of incurring debt and issuing bonds pursuant to chapter 32, title 42, Idaho Code.

42-3218D. INDEBTEDNESS -- BOND ISSUES. Water or sewer subdistricts may incur debt and issue bonds for the purpose of acquiring, purchasing, or improving a water or sewer site or sites, and acquiring or constructing new water or sewer facilities. The governing body of a water or sewer subdistrict may submit to the qualified electors of the water or sewer subdistrict the question of whether the governing body of the water or sewer subdistrict shall

be empowered to issue negotiable bonds of the water or sewer subdistrict in an amount and for a period of time to be named in the notice of election. Notice of the bond election shall be given, the election shall be conducted and the returns thereof canvassed and the qualifications of electors voting or offering to vote shall be as provided in chapter 32, title 42, Idaho Code.

42-3219. EXCLUSION OF PROPERTY PETITIONED -- HEARING -- ORDER. The owner or owners in fee of any real property constituting a portion of the district may file with the board a petition praying that such lands be excluded and taken from said district. Petitions shall describe the property which the petitioners desire to have excluded. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. The secretary of the board shall cause a notice of filing of such petition to be published in the county in which said property or the major portion thereof, is located. The notice shall state the filing of such petition, the names of petitioners, description of the property mentioned in said petition, and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at the time named in said notice, showing cause in writing, if any they have, why said petition should not be granted. The board at the time and place mentioned in the notice, or at the time or times at which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by any person showing cause as aforesaid, why the prayer of the petition should not be granted. The filing of such petition shall be deemed and taken as an assent by each and all such petitioners to the exclusion from the district of the property mentioned in the petition, or any part thereof. The board, if it deems it not for the best interests of the district that the property mentioned in the petition, or portion thereof, shall be excluded from the district, shall order that said petition be denied, but if it deems it for the best interest of the district that the property mentioned in the petition, or some portion thereof, be excluded from the district, then the board may order the property mentioned in the petition or some portion thereof, excluded from the district. Upon allowance of such petition, the board shall file a certified copy of the order of the board making such change with the clerk of the court and upon order of the court said property shall be excluded from the district.

42-3219A. EXCLUSION AND REMOVAL OF LANDS FOLLOWING REJECTION TWICE BY ELECTORATE OF CERTAIN PROPOSALS FOR CREATION OF INDEBTEDNESS. Upon rejection by the district electorate of substantially the same proposal in two (2) separate elections for the creation of indebtedness for the purpose of acquisition, construction, installation or completion of any works or other improvements or facilities or the making of any contract to carry out the purposes of the district, and after denial by the board of a petition for exclusion of property filed and heard, as provided under section 42-3219, the owners in fee, or their representatives, of real property located in the district may petition the district court of the judicial district in which the majority of the property subject of said petition is located for exclusion and removal of their lands from such water and sewer district. Such petition shall be signed by not less than fifty-one per cent (51%) of the qualified electors of the area to be excluded from the district, shall include a legal description of the real property, the subject of said petition, shall be acknowledged in the same manner and form as required in case of a conveyance of land and shall be accompanied by a deposit of money sufficient to pay all costs of the exclusion and removal proceedings. The petitioners shall cause notice of filing of such petition to be filed with the district, and to be published in a newspaper of general circulation in the county in which said property, or the major portion thereof, is located, once a week for three (3) consecutive weeks. Such notice shall state the date of filing of such petition and the names of the petitioners, shall include a legal description of the property mentioned in said petition, shall set forth the prayer of said petitioners, and shall notify all persons interested to appear at the deisgnated [designated] court at the time stated in said notice, showing cause in writing, if any they have, why said petition should not be granted. At any time before the expiration of the time of publication, any person may file his objections to said petition. At the time and place designated in the notice, or at the time or times at which the hearing of said petition may be adjourned, the court shall proceeed [proceed] to hear the petition and all objections thereto presented in writing by any person showing cause as aforesaid.

The court shall grant such petition upon finding that said proposals for the creation of indebtedness were twice rejected by the electors of the whole district, and upon the finding that said real property so designated by the petition for exclusion and removal forms a contiguous area and either has no need for water and sewage disposal services or reasonably constitutes a separate area for purposes of water and sewage disposal services.

The granting of such petition by the court and the exclusion of such property from the district shall not relieve such property from paying any bond indebtedness of the district existing at the time of said exclusion order against any such

property so excluded, nor shall the granting of said petition and exclusion of such property relieve such property of any levy for the support of said district for the year in which it is removed.

42-3219B. EXCLUSION AND REMOVAL OF LANDS FOLLOWING REJECTION TWICE BY ELECTORATE OF CERTAIN PROPOSALS FOR CREATION OF INDEBTEDNESS -- ALTERNATIVE PROCEDURE. The board of directors of the district may, upon rejection by the district electorate of substantially the same proposal in two (2) separate elections (whether held prior to or after enactment of this section) for the creation of indebtedness for the purpose of acquisition, construction, installation or completion of any works or other improvement or facilities or the making of any contract to carry out the purposes of the district, petition the district court of the judicial district in which the majority of the property subject of the petition is located for exclusion and removal of lands from such water and sewer district. Such petition shall include a general description of the boundaries of the area to be excluded from the district with such certainty as to enable a property owner to determine whether or not his property is within the area to be excluded and shall be verified. The board of directors of the district, as petitioners, shall cause notice of filing of such petition to be published in a newspaper of general circulation in the county in which said property, or the major portion thereof is located, once a week for three (3) consecutive weeks. Such notice shall state the date of filing of such petition, shall include a description of the boundaries of the area to be excluded from the district with such certainty as to enable a property owner to determine whether or not his property is within the area to be excluded, and shall notify all persons interested to appear at the designated court at the time stated in said notice, showing cause in writing, if any they have, why said petition should not be granted. At any time before the expiration of the time of publication, any person may file his objection to said petition. At the time and place designated in the notice, or at the time or times at which the hearing of said petition may be adjourned, the court shall proceed to hear the petition and all objections thereto presented in writing by any person showing cause as aforesaid. The court shall grant such petition upon finding that said proposals for the creation of indebtedness were twice rejected by the electors of the whole district, and upon the finding that said area so designated by the petition for exclusion and removal forms a contiguous area and either has no need for water or sewage disposal services or reasonably constitutes a separate area for purposes of water and sewage disposal services; or is of such location and character that water or sewage disposal services cannot be furnished to it by such water and sewer district at reasonable cost and that the withdrawal of such area will be conducive to the general welfare of the balance of the district. The granting of such petition by the court and such exclusion of said property from the district shall not relieve such property from paying any bond indebtedness of the district existing at the time of said exclusion order against any such property so excluded, nor shall the granting of such petition and exclusion of such property relieve such property of any levy for the support of said district for the year in which it is removed. The procedure for the exclusion and removal of lands from a water and sewer district as provided in this section shall be an alternative to the procedures provided in sections 42-3219 and 42-3219A, Idaho Code.

42-3238. PRIVATE COMMUNITY SEWER SYSTEM -- PROPERTIES EXEMPT FROM OTHER TAXATION. Notwithstanding any other provision of law, no water district, sewer district or water and sewer district shall levy or collect any tax, any fee or any other charge of any kind related in any way to the collection or treatment of sewage by such district against any property located in such district which property is served by a private community sewer system. Said properties shall be exempt from any such tax, fee or charge. A "private community sewer system" means a system which collects and processes sewage for ten (10) or more residences, commercial or industrial facilities. The exemption provided in this section shall not apply to residences, commercial or industrial facilities served by an individual septic system. Nothing contained herein shall prohibit a charge for the delivery or furnishing of water by such district.

50-220. ACQUISITION AND CONTROL OF LANDS OUTSIDE CORPORATE LIMITS PURPOSE. Cities are hereby authorized to acquire by purchase, lease or otherwise, lands outside of their respective corporate limits and to own, control, regulate and administer lands so acquired, either directly by said corporations or through any governmental agency or other agency

50-221. CITIES SITUATED ON NAVIGABLE LAKES AND STREAMS -- EXTENSION OF BOUNDARIES INTO WATERS. Cities situated on navigable lakes and streams, when the corporate boundaries or limits of such cities extend to the shorelines of such lakes or streams, shall have power by ordinance to fix, determine or extend its corporate boundaries or limits over the waters of such lakes or streams for a distance of one fourth (1/4) of a mile from the low-water mark of such navigable lakes, and for a distance of seventy-five (75) feet from the low-water mark of such navigable streams.

50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legislature hereby declares and determines that it is the policy of the state of Idaho that cities of the state should be able to annex lands which are reasonably necessary to assure the orderly development of Idaho's cities in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe. ...

iii) Preparation and publication of a written annexation plan, appropriate to the scale of the annexation contemplated, which includes, at a minimum, the following elements:

(A) The manner of providing tax-supported municipal services to the lands proposed to be annexed;
(B) The changes in taxation and other costs, using examples, which would result if the subject lands were to be annexed;
(C) The means of providing fee-supported municipal services, if any, to the lands proposed to be annexed;
(D) A brief analysis of the potential effects of annexation upon other units of local government which currently provide tax-supported or fee-supported services to the lands proposed to be annexed; and
(E) The proposed future land use plan and zoning designation or designations, subject to public hearing, for the lands proposed to be annexed;

50-235. TAX LEVY FOR GENERAL AND SPECIAL PURPOSES. The city council of each city is hereby empowered to levy taxes for general revenue purposes not to exceed nine tenths percent (.9%) of the market value for assessment purposes on all taxable property within the limits of the city in any one (1) year, and such levies for special purposes as are or may hereafter be provided, on all property within the limits of the city, taxable according to the laws of the state of Idaho, the valuation of such properties to be ascertained from the assessment rolls of the proper county.

CHAPTER 3 POWERS

50-301. CORPORATE AND LOCAL SELF-GOVERNMENT POWERS. Cities governed by this act shall be bodies corporate and politic; may sue and be sued; contract and be contracted with; accept grants-in-aid and gifts of property, both real and personal, in the name of the city; acquire, hold, lease, and convey property, real and personal; have a common seal, which they may change and alter at pleasure; may erect buildings or structures of any kind, needful for the uses or purposes of the city; and exercise all powers and perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the state of Idaho.

50-304. PRESERVATION OF PUBLIC HEALTH. Cities may establish a board of health and prescribe its powers and duties; pass all ordinances and make all regulations necessary to preserve the public health; prevent the introduction of contagious diseases into the city; make quarantine laws for that purpose and enforce the same within five (5) miles of the city.

50-315. REHABILITATION IMPROVEMENTS. Cities may provide for the repairing, rebuilding and relaying of pavement, curb, gutter, sewer or other improvements, the procedure and manner of payment to be the same as provided by law for making such improvements in the first instance.

50-323. DOMESTIC WATER SYSTEMS. Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems; provide for domestic water from wells, streams, water sheds or any other source; provide for storage, treatment and transmission of the same to the inhabitants of the city; and to do all things necessary to protect the source of water from contamination. The term "domestic water systems" and "domestic water" includes by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses.

50-324. CITIES AUTHORIZED TO JOINTLY PURCHASE OR LEASE, MAINTAIN OR OPERATE

A JOINT WATER SYSTEM. All cities of this state are empowered by ordinance to negotiate for and purchase or lease, and to maintain and operate, in cooperation with adjoining cities of states bordering this state, the out of state water distribution system, plant and equipment of privately owned utilities used for the purpose of supplying water to the purchasing or leasing cities from an out of state source; provided, the legislature of the state in which such water distribution system, plant, equipment and supply are located, by enabling legislation, authorizes its cities to join in such purchase or lease, maintenance and operation. The city council of the cities acting jointly under this section shall have authority, by mutual agreement, to exercise jointly all powers granted to each individual city in the purchase or lease, maintenance and operation of a water supply system.

50-331. CONTROL OF WATERS. Cities may establish, alter and change the channels of watercourses and wall or cover the same within the boundaries of the city and outside the corporate limits to the extent necessary to preserve the watercourse.

50-332. CONTROL OF SEWERS AND DRAINS. Cities are authorized to clear, cleanse, alter, straighten, widen, pipe, wall, fill or close any waterway, drain or sewer or any watercourse in such city when not declared, by law, to be navigable and, as provided in section 50-1008, assess the expense thereof in whole or in part to the property specially benefited thereby.

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50-332. CONTROL OF SEWERS AND DRAINS. Cities are authorized to clear, cleanse, alter, straighten, widen, pipe, wall, fill or close any waterway, drain or sewer or any watercourse in such city when not declared, by law, to be navigable and, as provided in section 50-1008, assess the expense thereof in whole or in part to the property specially benefited thereby.

50-345. COMPUTERIZED MAPPING SYSTEM FEES.
(1) As used in this section,"computerized mapping system" or "system" means the digital storage, processing and retrieval of cadastral information derived from local government records and related information such as land use, topography, water, streets and geographic features.
(2) In a city which develops a computerized mapping system, the city council may impose and collect fees from the users of this system for the development, maintenance and dissemination of digital forms of the system. These fees shall not exceed the actual costs of development, annual maintenance and dissemination of the computerized mapping system. These fees shall not apply to official paper maps produced from the computerized mapping system.

50-901. ORDINANCES -- STYLE -- PUBLICATION -- WHEN EFFECTIVE -- IMMEDIATE OPERATION IN EMERGENCIES. The style of all ordinances shall be: "Be it ordained by the mayor and council of the city of ....." and all ordinances of a general nature, unless otherwise required by law, shall, before they take effect and within one (1) month after they are passed, be published in full or by summary as provided in section 50-901A, Idaho Code, in at least one (1) issue of the official newspaper of the city, or mailed as provided in section 60-109A, Idaho Code; provided, however, that in cases of riot, infections or contagious disease, or other impending danger requiring immediate enforcement, such ordinances shall take effect upon the proclamation of the mayor or president of the council, posted in at least five (5) public places of the city; provided further, that nationally recognized codes such as, but not limited to, those establishing rules and regulations for the construction, alteration or repair of buildings, the installation of plumbing, the installation of electric wiring, fire prevention, gas piping installations, sanitary regulations, health measures, and statutes of the state of Idaho such as, but not limited to, those relating to the operation of motor vehicles, equipment of motor vehicles, traffic control devices, motor vehicle laws, liquor and beer laws, housing, construction, health and sanitation, may be adopted by a city council without including more than a particular reference to such code, and without publication or posting thereof, if adoption of such code be made in a regularly adopted and published ordinance; provided further, that at least one (1) copy of the supplemental code, duly certified by the city clerk, shall have been filed for use and examination by the public in the office of the clerk of the city prior to the adoption of the ordinance by the

city council. Following its adoption by the city, one (1) copy of the supplemental code shall be retained by the city, which shall be filed in the office of the city clerk.

50-901A. SUMMARIZATION OF ORDINANCES PERMITTED -- REQUIREMENTS.

(1) In lieu of publishing the entire ordinance under section 50-901, Idaho Code, the city may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:
   (a) The name of the city;
   (b) The formal identification or citation number of the ordinance;
   (c) A descriptive title;
   (d) A summary of the principal provisions of the ordinance, including penalties provided and the effective date;
   (e) Any other information necessary to provide an accurate summary; and
   (f) A statement that the full text is available at the city hall.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains legal descriptions, or contains provisions regarding taxation or penalties concerning real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering one or more street addresses, the street addresses of the corners of the area described shall meet this requirement. Maps may be substituted for written legal description of property provided they contain sufficient detail to clearly define the area with which the ordinance is concerned.

(3) Before submission of a summary to a newspaper for publication under this section, the legal advisor of the city shall sign a statement, which shall be filed with the ordinance, that the summary is true and complete and provides adequate notice to the public.

(4) The full text of any ordinance which is summarized by publication under this section shall be promptly provided by the city clerk to any citizen on personal request.

CHAPTER 10 FINANCES

50-1020. WATERWORKS -- LIGHT AND POWER PLANTS -- SEWERAGE SYSTEMS. Every city incorporated under the laws of the territory of Idaho or of the state of Idaho shall have power and authority to issue city coupon bonds in a sufficient amount to acquire, by purchase or otherwise, waterworks plants and water supply, light and power plants, storm sewers and sanitary sewerage systems, and to construct, enlarge, extend, repair, alter and improve such plants or systems notwithstanding the percentage limitation of the previous section. "Waterworks plants and water supply" include by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses. The amount for which bonds may be issued for purposes as in this section provided shall be determined by the council and stated in the ordinance therefor, and shall be authorized in such amount as the city council shall deem necessary by one or more bond elections, called as provided in section 50-1026, Idaho Code, or amendatory act.

50-1026A. CITY BONDS -- PLEDGE OF REVENUES.

(a) In the ordinance required in section 50-1026, Idaho Code, providing for the issuance of bonds of a city to be issued to acquire, improve, construct or extend a revenue producing system or facility to be owned and operated by the city, the city council may pledge, as an additional source of payment of such bonds, all or any part of the revenues derived or to be derived from rates, fees, tolls, or charges imposed for the services, facilities, or commodities furnished by the revenue producing system or facility to be so acquired, improved or extended.

(b) The notice of the election on bonds provided for in section 50-1026, Idaho Code, shall describe any pledge of revenues made pursuant to this section. The proposition appearing on the ballot provided for in section 50-1026, Idaho Code, shall indicate that the bonds are to be additionally secured by a pledge of revenues of designated revenue producing systems or facilities owned and operated by the city.

(c) The city council of a city may, in the ordinance required in section 50-1026, Idaho Code, providing for the issuance of bonds to which revenues have been pledged as provided in this section, covenant to prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities, or commodities furnished by any revenue producing system or facility owned and operated by the city, all or a portion of the revenues of which have been pledged to bonds of the city as provided in this section, and may covenant to prescribe and collect such rates, fees, tolls or charges as will produce revenues sufficient, in addition to any other requirements of law, to pay all or a portion of the maturing principal of an interest on the bonds to which such revenues have been pledged.

(d) The provisions of section 57-214, Idaho Code, to the contrary notwithstanding, bonds of a city to which revenues have been pledged as provided in this section, if issued to provide electric improvements or facilities, may be sold in such manner and at such price as the city council may in its discretion determine advisable, providing [provided] that such bonds may not be issued to acquire generation, transmission, or distribution facilities owned by other utilities without the consent of the utility owning the improvement or facility. Bonds of a city to which revenues have been pledged as provided in this section may be issued in coupon or registered form. The city council may provide for the use of a portion of the proceeds of sale of bonds to which revenues have been pledged as provided in this section to pay interest on the bonds during the period to be covered by the construction of the facility or improvement for which the bonds are to be issued and to establish such reserves as the city council shall deem to be necessary.

(e) The provisions of section 50-1041, Idaho Code, shall not apply to bonds of a city to which revenues have been pledged as provided in this section. Such bonds shall be deemed not to have been issued under the revenue bond act.

50-1032. PROJECTS TO BE SELF-SUPPORTING. The council of a city issuing bonds pursuant to this act shall prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities furnished by such works or rehabilitated existing electrical generating facilities, and shall revise such rates, fees, tolls or charges from time to time, to provide that all such works or rehabilitated existing electrical generating facilities shall be and always remain self-supporting. The rates, fees, tolls or charges prescribed shall be such as will produce revenue at least sufficient,

(a) to pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered including reserves therefor, and

(b) to provide for all expenses of operation and maintenance of such works or rehabilitated existing electrical generating facilities, including reserves therefor.

50-1047. GENERAL PROVISIONS. Any ordinance assessing a tax pursuant to this act shall contain a finding by the local governing body of the city based upon evidence presented to it that the condition set forth in section 50-1044, Idaho Code, exists and shall provide the methods for reporting and collecting taxes due. Taxes collected pursuant to any such ordinance shall be remitted to the city official designated in such ordinance or other such official contracting, pursuant to this act, with the city to provide collection services, and shall constitute revenue of the city available for any lawful corporate purpose approved by city voters subject to the provisions of this act. In any election, the ordinance submitted to city voters shall:

(a) state and define the specific tax to be approved;

(b) state the exact rate of the tax to be assessed;

(c) state the exact purpose or purposes for which the revenues derived from the tax shall be used; and

(d) state the duration of the tax. No tax shall be redefined, no rate shall be increased, no purpose shall be modified, and no duration shall be extended without subsequent approval of city voters. An ordinance adopting any local-option nonproperty tax authorized by this act may provide for separate identification of taxes as may be appropriate. The city clerk of any city adopting an ordinance pursuant to this act shall, immediately following approval of such ordinance, or any amendment thereto, forward a copy of said ordinance or amendment to the chairman of the state tax commission, and the chairman of the state board of tax appeals.

50-1048. COORDINATION WITH COUNTY LOCAL-OPTION NONPROPERTY TAXES. In the event that counties are given local-option nonproperty tax authority, it is the intent of the legislature that such county local-option nonproperty taxes be coordinated with existing city local-option nonproperty taxes in the county.

50-1049. COLLECTION AND ADMINISTRATION OF LOCAL-OPTION NONPROPERTY TAXES BY STATE TAX COMMISSION -- DISTRIBUTION.

(a) A city which has levied a tax pursuant to section 50-1044, Idaho Code, may contract with the state tax commission for the collection and administration of such taxes in like manner and under the definitions, rules and regulations of the tax commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code. A city which levies such tax shall have the right to review and audit the records of collection thereof maintained by the commission and the returns of taxpayers relating to such tax. Alternatively, such city shall have authority to administer and collect such tax.

(b) All revenues collected by the tax commission pursuant to section

50-1044, Idaho Code, shall be distributed as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by commission to be paid shall be paid through the state refund account and those moneys are continuously appropriated;

(2) An amount of money equal to such fee as may be agreed upon between the commission and such city for the actual cost of the collection and administration of the tax. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost at the end of each fiscal year shall be distributed as provided in paragraph (3)of this subsection;

(3) All remaining moneys received pursuant to this chapter shall be placed in an account designated by the state controller and remitted monthly to the city levying such tax.

CHAPTER 11 PLANNING COMMISSIONS -- [REPEALED]
CHAPTER 12 ZONING -- [REPEALED]

CHAPTER 13 PLATS AND VACATIONS

50-1301. DEFINITIONS.-- The following definitions shall apply to terms used in sections 50-1301 through 50-1334, Idaho Code.

1. Easement: A right of use, falling short of ownership, and usually for a certain stated purpose;
4. Monument: A physical structure or object that occupies the position of a corner;
5. Owner: The proprietor of the land, (having legal title);
6. Plat: The drawing, map or plan of a subdivision, cemetery, townsite or other tract of land, or a replatting of such, including certifications, descriptions and approvals;
12. Reference Monument: A special monument that does not occupy the same geographi c position as the corner itself, but whose spatial relationship to the corner is known and recorded, and which serves to witness the corner;
13. Sanitary Restriction: the requirement that no building or shelter which will require a water supply facility or a sewage disposal facility for people using the premises where such building or shelter is located shall be erected until written approval is first obtained from the state board of health by its administrator or his delegate approving plans and specifications either for public water and/or sewage facilities, or individual parcel water and/or sewage facilities;
15. Subdivision: A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger, and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of the above definition.
16. Witness Corner: a monumented point usually on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner.

50-1304. ESSENTIALS OF PLATS. All plats offered for record in any county shall be prepared in black opaque image upon stable base drafting film with a minimum base thickness of 0.003 inches, by either a photographic process using a silver image emulsion or by use of a black opaque drafting film ink, by mechanical or handwritten means. The drafting film and image thereon shall be waterproof, tear resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. If ink is used on drafting film, the ink surface shall be coated with a suitable substance to assure permanent legibility. The drafting film must be of a type which can be reproduced by either a photographic or diazo process. Plats shall be eighteen (18) inches by twenty-seven (27) inches in size, with a three and one-half (3 1/2) inch margin at the left end for binding and a one-half (1/2) inch margin on all other edges. No part of the drawing or certificates shall encroach upon the margins. Signatures shall be in reproducible black ink. The sheet or sheets which contain the drawing or diagram representing the survey of the subdivision shall be drawn at a scale suitable to insure the clarity of all lines, bearings and dimensions. In the event that any subdivision is of such magnitude that the drawing or diagram cannot be placed on a single sheet, serially numbered sheets shall be prepared and match lines shall be indicated on the drawing or diagram with appropriate references to other sheets. The required dedications, acknowledgements and certifications shall appear on any of the serially numbered sheets. The plat shall show:

(a) the streets and alleys, with widths and courses clearly shown;

(b) each street named;

(c) all lots numbered consecutively in each block, and each block lettered or numbered, provided, however, in a platted cemetery, that each block, section, district or division and each burial lot shall be designated by number or letter or name;

(d) each and all lengths of the boundaries of each lot shall be shown, provided, however, in a platted cemetery, that lengths of the boundaries of each burial lot may be shown by appropriate legend;
(e) the exterior boundaries shown by distance and bearing;
(f) descriptions of survey monuments;
(g) point of beginning with ties to at least two (2) public land survey corner monuments in one (1) or more of the sections containing the subdivision, or in lieu of public land survey corner monuments, to two (2) monuments recognized by the county surveyor; and also, if required by the city or county governing bodies, give coordinates based on the Idaho coordinate system;
(h) the easements;
(i) basis of bearings; and
(j) subdivision name.

50-1306. EXTRATERRITORIAL EFFECTS OF SUBDIVISION - PROPERTY WITHIN THE AREA OF CITY IMPACT.—All plats situate within an officially designated area of city impact as provided for in section 67-6525, Idaho Code, shall be administered in accordance with the provisions set forth in the adopted city or county zoning and subdivision ordinances having jurisdiction. In the situation where no area of city impact has been officially adopted, the county with jurisdiction shall transmit all proposed plats situate within one (1) mile outside the limits of any incorporated city which has adopted a comprehensive plan or subdivision ordinance to said city for review and comment at least fourteen (14) days before the first official decision regarding the subdivision is to be made by the county. Items which may be considered by the city include, but are not limited to, continuity of street pattern, street widths, integrity and continuity of utility systems and drainage provisions. The city's subdivision ordinance and/or comprehensive plan shall be used as guidelines for making the comments hereby authorized. The county shall consider all comments submitted by the city. Where the one (1) mile area of impact perimeter of two (2) cities overlaps, both cities shall be notified and allowed to submit comments.

50-1306A. VACATION OF PLATS -- PROCEDURE.

(1) Any person, persons, firm, association, corporation or other legally recognized form of business desiring to vacate a plat or any part thereof which is inside or within one (1) mile of the boundaries of any city must petition the city council to vacate. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.
(2) Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.
(3) When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.
(4) When the platted area lies more than one (1) mile beyond the city limits, the procedures set forth herein shall be followed with the county commissioners of the county wherein the property lies. The county commissioners shall have authority, comparable to the city council, to grant the vacation, provided, however, when the platted area lies beyond one (1) mile of the city limits, but adjacent to a platted area within one (1) mile of the city, consent of the city council of the affected city shall be necessary in granting any vacation by the county commissioners.
(5) In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur upon the recording of the new or amended plat, provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.
(6) When public streets or public rights-of-way are located within the boundary of a highway district, the highway district commissioners shall assume the authority to vacate said public streets and public rights-of-way as provided in subsection (4) of this section.
(7) All publication costs shall be at the expense of the petitioner.

(8) Public highway agencies acquiring real property within a platted subdivision for highway right-of-way purposes shall be exempt from the provisions of this section.
(9) Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be replatted.

50-1315. EXISTING PLATS VALIDATED.-- None of the provisions of sections 50-1301 through 50-1325, Idaho Code, shall be construed to require replatting in any case where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore filed for record and not subsequently vacated are hereby declared valid, not withstanding irregularities and omissions in manner of form of acknowledgment or certificate. Provided, however:
(1) When plats have been accepted and recorded for a period of five (5) years and said plats include public streets that were never laid out and constructed to the standards of the appropriate public highway agency, said public street may be classified as public right of way; and
(2) Public rights of way for vehicular traffic included in plats which would not conform
to current highway standards of the appropriate public highway agency regarding alignments and access locations which, if developed, would result in an unsafe traffic condition, shall be modified or reconfigured in order to meet current standards before access permits to the public right of way are issued.

50-1324. RECORDING VACATIONS. – 1) Before a vacation of a plat can be recorded, the county treasurer must certify that all taxes due are paid and such certification is recorded as part of the records of the vacation. The treasurer shall withhold the certification only when property taxes are due, but not paid. Upon payment of the appropriate fee therefore, the county recorder of each county shall index and record, in the same manner as other instruments affecting the title to real property, a certified copy of each ordinance, resolution, or order by which any lot, tract, public street, public right of way, private road, easement, common, plat or any part thereof has been vacated. Such certification shall be by the officer having custody of the original document and shall certify that the copy is a full true and correct copy of the original.

50-1325. EASEMENTS - VACATIONS OF. Easements shall be vacated in the same manner as streets.

50-1326. ALL PLATS TO BEAR A SANITARY RESTRICTION -- SUBMISSION OF PLANS AND SPECIFICATIONS OF WATER AND SEWAGE SYSTEMS TO STATE DEPARTMENT OF HEALTH AND WELFARE -- REMOVAL OR RE-IMPOSITION OF SANITARY RESTRICTION. -- For the purposes of sections 50-1326 through 50-1329, Idaho Code, any plat of a subdivision filed in accordance with chapter 13, title 50, Idaho Code, or in accordance with county ordinances adopted pursuant to chapter 38, title 31, Idaho Code, shall be subject to the sanitary restriction. There shall be placed upon the face of every plat prior to it being recorded by the county clerk and recorder, the sanitary restriction, except such sanitary restriction may be omitted from the plat, or if it appears on the plat, may be indorsed by the county clerk and recorder as sanitary restriction satisfied, when there is recorded at the time of the filing of the plat, or at any time subsequent thereto, a duly acknowledged certificate of approval issued by the director of the department of health and welfare, for either public water and/or public sewer facilities, or individual water and/or sewage facilities for the particular land. The owner shall have the obligation of submitting to the director all information necessary concerning the proposed facilities referred to. Such certificate of approval may be issued for the subdivision or any portion thereof. Until the sanitary restrictions have been satisfied by the filing of said certificate of approval, no owner shall construct any building or shelter on said premises which necessitates the supplying of water or sewage facilities for persons using such premises. The sanitary restrictions shall be reimposed on the plat upon the issuance of a certificate of disapproval after notice to the responsible party and an opportunity to appeal, if construction is not in compliance with approved plans and specifications, or the facilities do not substantially comply with regulatory standards in effect at the time of facility construction.

50-1327. FILING OR RECORDING OF NON-COMPLYING MAP OR PLAT PROHIBITED.-- No person shall offer for recording, or cause to be recorded, a plat not containing a sanitary restriction, unless there is submitted for record at the same time the certificate of approval from the director of the department of health and welfare as required in section 50-1326, Idaho Code. The filing and recording of a noncomplying plat shall in no way invalidate a title conveyed thereunder.

50-1328. RULES FOR THE ADMINISTRATION AND ENFORCEMENT OF SANITARY RESTRICTIONS.-- The state board of health and welfare may adopt rules pursuant to 39-107(8), Idaho Code, including adoption of sanitary standards necessary for administration and enforcement, pursuant to section 39-108, Idaho Code, of sections 50-1326 through 50-1329, Idaho Code. The rules and standards shall provide the

basis for approving subdivision plats for various types of water and sewage facilities, both public and individual, and may be related to size of lots, contour of land, porosity of soil, ground water level, pollution of water, type of construction of water and sewage facilities, and other factors for the protection of the public health or the environment.

50-1329. VIOLATION A MISDEMEANOR.-- Any person, firm or corporation who constructs, or causes to be constructed, a building or shelter prior to the satisfaction of the sanitary restriction, or who installs or causes to be installed water and sewer facilities thereon prior to the issuance of a certificate of approval by the director of the department of health and welfare, shall be guilty of a misdemeanor. Each and every day that such activities are carried on in violation of this section shall constitute a separate and distinct offense.

50-1334. REVIEW OF WATER SYSTEMS ENCOMPASSED BY PLATS.-- Whenever any plat is subject to the terms and requirements of sections 50-1326 through 50-1329, Idaho Code, no person shall offer for recording, or cause to be recorded, a plat unless he or she shall have certified that at least one (1) of the following is the case:

(1) The individual lots described in the plat will not be served by any water system common to one (1) or more of the lots, but will be served by individual wells.

(2) All of the lots in the plat will be eligible to receive water service from an existing water system, be the water system municipal, a water district, a public utility subject to the regulation of the Idaho public utilities commission, or a mutual or nonprofit water company and the existing water distribution system has agreed in writing to serve all of the lots in the subdivision.

(3) If a new water system will come into being to serve the subdivision, that it has or will have sufficient contributed capital to allow the water system's wells, springboxes, reservoirs and mains to be constructed to provide service without further connection charges or fees to the landowners of the lots, except for connection of laterals, meters, or other plant exclusively for the lot owner's own use. Failure to comply with this section is a misdemeanor subject to the provisions of section 50-1329 , Idaho Code. The certification must be filed or recorded as part of the plat document preserved for public inspection. Property owners in the area encompassed by the plat will be entitled to the benefits of the third provision of this section when that option is chosen.

50-1701. SHORT TITLE. Chapter 17, title 50, Idaho Code, shall be known and cited as the "Local Improvement District Code

50-1702. DEFINITIONS. The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively given herein.

(a) Municipality. Counties, water and/or sewer districts organized pursuant to the provisions of chapter 32, title 42, Idaho Code, highway districts, cities, including but not limited to those working under a special charter which have by such charter accepted the provisions of this code, and any city or like municipality hereafter created or authorized by the legislature unless one or more of the above shall be specifically excepted in any particular section of this code.

(b) Street or streets. The entire legal right of way and highways, roads, boulevards, avenues, streets, alleys, courts and all public places within a city, county, highway district, or water and/or sewer district.

(c) Council. The board of county commissioners, board of directors of water and/or sewer districts, the board of highway commissioners of any highway district, the mayor and council of all incorporated municipalities as well as any other municipal body or board which may now, or hereafter be authorized by law to do and perform any act in relation to the making of local improvements within any municipality as provided for in this code.

(d) Clerk, attorney or other municipal officer. The appropriate and comparable city and county officers with regard to city and county local improvement districts, highway district officers with regard to such highway district local improvement districts, and water and/or sewer district officers in regard to water and/or sewer local improvement districts.

(e) Engineer. The official engineer of the municipality or one specially retained for purposes of operating under this code.

(f) Off-street parking. All machinery, equipment, materials and appurtenances, including lands, easements, rights of way and buildings required, necessary or useful for the parking of vehicles on lands or places other than public streets.

(g) Resident owner or resident owners. The owner of property within, and

who resides in a dwelling house situate in whole or in part within the limits of a local improvement district, or a proposed local improvement district; and a corporation, joint stock association, partnership, individual proprietor, or other form of business enterprise owning real property, and having its principal place of business, within any such district or proposed district.

(h) Cost and expenses. The contract price of all improvements, including the cost of making improvements within any intersection, together with any costs or expenses incurred for engineering, clerical, printing and legal services as well as for advertising, surveying, inspection of work, collection of assessments, interest upon bonds or warrants, and an amount for contingencies as shall be considered necessary by the council.

50-1703. POWERS CONFERRED.

(a) The governing body of any municipality shall have power to make or cause to be made any one (1) or more or combination of the following improvements:

(1) To establish grades and lay out, establish, open, extend and widen any local, collector, arterial or other street, sidewalk, alley or off-street parking facility;

(2) To purchase, acquire, construct, improve, repair, light, grade, pave, repave, surface, resurface, curb, gutter, sewer, drain, landscape and beautify any street, sidewalk or alley;

(3) To purchase, construct, reconstruct, extend, maintain or repair bridges, sidewalks, crosswalks, driveways, culverts, sanitary sewers, storm sewers, ditches, drains, conduits, flood barriers and channels for sanitary and drainage purposes, or either or both thereof, with inlets or outlets, manholes, catch basins, flush tanks, treatment systems and all other sewer and drainage appurtenances necessary for the comfort, convenience, health and well-being of the inhabitants of the municipality; provided, that any improvements for sanitary sewer facilities shall be constructed so as to conform with the general rules of the Idaho department of environmental quality;

(4) To construct, reconstruct, extend, maintain, or repair lines, facilities and equipment (other than generating equipment) for street lighting purposes or for the expansion or improvement of a previously established municipally-owned electrical distribution system, to a district within the boundaries of the municipality;

(5) To plant, or cause to be planted, set out, cultivate and maintain lawns, shade trees or other landscaping;

(6) To cover, fence, safeguard or enclose reservoirs, canals, ditches and watercourses and to construct, reconstruct, extend, line or reline, maintain and repair waterworks, reservoirs, canals, ditches, pipes, mains, hydrants, and other water facilities for the purpose of supplying water for domestic, irrigation and fire protection purposes, or any of them; regulating, controlling or distributing the same and regulating and controlling water and watercourses leading into the municipality;

(7) To acquire, construct, reconstruct, extend, maintain or repair parking lots or other facilities for the parking of vehicles on or off streets;

(8) To acquire, construct, reconstruct, extend, maintain or repair parks and other recreational facilities;

(9) To remove any nonconforming existing facility or structure in the areas to be improved;

(10) To construct, reconstruct, extend, maintain or repair optional improvements;

(11) To acquire by purchase, gift, condemnation, or otherwise any real or personal property within the limits of the municipality as in the judgment of the council may be necessary or convenient in order to make any of such improvements or otherwise to carry out the purposes of this chapter;

(12) To make any other improvements now or hereafter authorized by any other law, the cost of which in whole or in part can properly be determined to be of particular benefit to a particular area within the municipality;

(13) To construct and install all such structures, equipment and other items and to do all such other work and to incur any such costs and expenses as may be necessary or appropriate to complete any of such improvements in a proper manner;

(14) To purchase, build, construct, reconstruct or otherwise improve parking facilities and all other appurtenances necessary to provide adequate off-street parking, and to that end may acquire real or personal property by purchase, gift, condemnation or otherwise, and may own, possess and maintain such real or personal property within the limits of the municipality as in the judgment of the council may be necessary and convenient for such purposes; and

(15) To acquire, purchase, build, construct or reconstruct irrigation systems, install underground tiling and cover open irrigation ditches.

(b) For the purpose of making and paying for all or a part of the cost of any of such improvements (including optional improvements), the governing body of a

municipality may create local improvement districts within the municipality, levy assessments on the property within such a district which is benefited by the making of the improvements and issue interim or registered warrants and local improvement bonds as provided in this chapter.

50-1703A. LOCAL BUSINESS IMPROVEMENT DISTRICTS.

(1) The legislature finds that the development of architectural themes for cities is a legitimate method to further the public health, safety and welfare of cities. The purpose of the provisions of this section is to authorize cities to create local business improvement districts for the purpose of constructing and financing the cost and expense of improvements to the exterior portions of business buildings to bring business buildings within the district into conformity with the architectural theme adopted by the city. The improvement of business buildings in conformity with the architectural theme adopted by the city is hereby declared a public purpose.

(2) Municipalities are hereby authorized to create local business improvement districts for the purpose of constructing and financing the cost and expense of improvements to the exterior portions of business buildings in order to bring business buildings within such districts into conformity with an architectural theme adopted by the city.

(3) The term "business building" includes any building devoted primarily to business purposes, including professional and governmental purposes.

(4) It is the intent of the provisions of this section that local business improvement districts be administered in all respects as are local improvement districts, except as provided herein.

(5) Local business improvement districts shall be initiated by presentment to the council of a petition containing the following:
   (a) A description of the particular lots and parcels to be included in the proposed district;
   (b) A description of the improvements to be constructed and financed by the district;
   (c) The estimated cost of the improvements;
   (d) The percentage of the cost to be assessed against each lot and parcel within the district; and
   (e) The signature of the owner of record of each lot or parcel to be included within the district, consenting to inclusion of the lot or parcel within the district.

(6) The total project amount assessed against each parcel within the district shall be no more than twenty percent (20%) of the market value for assessment purposes of the parcel.

(7) Lots and parcels need not be contiguous in order to be included within a district. No lot or parcel may be included within a district without the written consent of the owner thereof; provided, that, after the district has been created, consent to inclusion in the district may not subsequently be withdrawn prior to payment of all costs of the improvements.

(8) Upon receipt of the petition, the council shall adopt a resolution of intention, substantially in the form provided in section 50-1707, Idaho Code, stating the council's intention to create the district, to make the improvements, and to levy assessments to pay the cost thereof. The resolution shall contain a statement as to the percentage of the costs to be assessed gainst each particular lot or parcel within the proposed district.

(9) Notice shall be given and a hearing conducted in the manner provided in sections 50-1708 and 50-1709, Idaho Code. If, after such hearing, the council determines to create the district, it shall proceed as provided in this chapter for the creation of the district, the construction of the improvements, the preparation of, hearing upon, and confirmation of the assessment roll, the collection of assessments and the issuance of bonds and [or] warrants. Each assessment shall be a lien upon the property against which it is assessed, as provided in section 50-1721, Idaho Code.

CHAPTER 18 CITY IRRIGATION SYSTEMS

CHAPTER 19 HOUSING AUTHORITIES AND COOPERATION LAW

50-1902. FINDING AND DECLARATION OF NECESSITY. It is hereby declared:

(a) That there exist in this state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime, and constitute a menace to the health, safety, morals and welfare of the residentsof the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities;

(b) That these areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved through

the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise;

(c) That the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions.

50-1904. POWERS OF AUTHORITY. A housing authority shall constitute an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority, including the power to contract with other housing authorities for services; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the authority.

(b) Within the area of operation: to prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; and, notwithstanding anything to the contrary contained in this act or in any other provision of law, to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this act, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise, any real or personal property or any interest therein; to acquire, by the exercise of the power of eminent domain, any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operation of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance; to rent or sell and to agree to rent or sell dwellings forming part of the housing projects to or for persons of low income. Where an agreement or option is made to sell a dwelling to a person of low income, the authority may convey the dwelling to the person upon fulfillment of the agreement irrespective of whether the person is at the time of the conveyance a person of low income. Leases, options, agreements or conveyances may include such covenants as the authority deems appropriate to assure the achievement of the objectives of this chapter.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which banks may legally invest funds, subject to the control of the housing authority; to purchase its own bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be cancelled.

(f) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of adequate, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(g) Acting through one (1) or more commissioners or other person or persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof, under oath, at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring attendance of witnesses or the production of books and papers, and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available, to appropriate agencies (including

those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation), its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(h) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans to persons of low income to enable them to acquire, construct, reconstruct, rehabilitate, improve, lease or refinance their dwellings, and to take such security therefor as is deemed necessary and prudent by the authority.

(i) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans for the acquisition, construction, reconstruction, rehabilitation, improvement, leasing or refinancing of land, buildings or developments for housing for persons of low income. For purposes of this subsection, development shall include either land or buildings or both.

(j) Any housing project shall be subject to the requirement that the dwelling units made available to persons of low income together with functionally related and subordinate facilities shall occupy at least thirty percent (30%) of the interior space of any individual building other than a detached single-family or duplex residential building or mobile or manufactured home and shall occupy at least fifty percent (50%) of the total number of units in the development or at least fifty percent (50%) of the total number of units in the development, whichever produces the greater number of units for persons of low income. For mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent (50%) of the total number of mobile home lots in the park.

(k) To exercise all or any part or combination of powers herein granted.

50-1915. PLANNING, ZONING AND BUILDING LAWS. All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality of any housing project and an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

50-1923. AID FROM FEDERAL GOVERNMENT. In addition to the powers conferred upon an authority by other provisions of this act, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and to make such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking[,] construction, maintenance or operation of any housing project by such authority

CHAPTER 20 URBAN RENEWAL LAW

50-2002. FINDINGS AND DECLARATIONS OF NECESSITY. It is hereby found and declared that there exist in municipalities of the state deteriorated and deteriorating areas (as herein defined) which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of these conditions is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenue because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities. It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that salvageable areas can be conserved and rehabilitated through appropriate public action as herein authorized, and the cooperation and voluntary action of the owners and tenants of property in such areas. It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended as herein provided and the power of eminent domain and police power exercised; and that the

necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

50-2005. FINDING OF NECESSITY BY LOCAL GOVERNING BODY. No urban renewal agency and no municipality shall exercise the authority hereafter conferred by this act until after the local governing body shall have adopted a resolution finding that:

(1) one or more deteriorated or deteriorating areas as defined in this act exist in such municipality;
(2) the rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality; and
(3) there is need for an urban renewal agency to function in the municipality

50-2007. POWERS. Every urban renewal agency shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) to undertake and carry out urban renewal projects and related activities within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act; and to disseminate slum clearance and urban renewal information;
(b) to provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, off-street parking facilities, public facilities, other buildings or public improvements; and any improvements necessary or incidental to a redevelopment project; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project and related activities, and to include in any contract let in connection with such a project and related activities, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;
(c) within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain, upon sufficient cause and after a hearing on the matter, an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon; to hold, improve, renovate, rehabilitate, clear or prepare for redevelopment any such property or buildings; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this act: Provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project and related activities, unless the legislature shall specifically so state;
(d) with the approval of the local governing body,
    (1) prior to approval of an urban renewal plan, or approval of any modifications of the plan, to acquire real property in an urban renewal area, demolish and remove any structures on the property, and pay all costs related to the acquisition, demolition, or removal, including any administrative or relocation expenses; and
    (2) to assume the responsibility to bear any loss that may arise as the result of the exercise of authority under this subsection in the event that the real property is not made part of the urban renewal project;
(e) to invest any urban renewal funds held in reserves or sinking funds or any such funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 50-2012, Idaho Code, at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled;
(f) to borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to give such security as may be required and to enter into and carry out contracts or agreements in connection therewith; and to include in any contract for financial assistance with the federal government for or with respect to an urban renewal project and related activities such conditions imposed pursuant to federal laws as the

municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act;

(g) within its area of operation, to make or have made all surveys and plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans, which plans may include, but are not limited to:
    (1) plans for carrying out a program of voluntary compulsory repair and rehabilitation of buildings and improvements,
    (2) plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and
    (3) appraisals, title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of urban renewal projects and related activities; and to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and developing and demonstrating new or improved means of providing housing for families and persons of low income and to apply for, accept and utilize grants of funds from the federal government for such purposes;

(h) to prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations and others) displaced from an urban renewal area, and notwithstanding any statute of this state to make relocation payments to or with respect to such persons for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government;

(i) to exercise all or any part or combination of powers herein granted;

(j) in addition to its powers under subsection (b) of this section, an agency may construct foundations, platforms, and other like structural forms necessary for the provision or utilization of air rights sites for buildings and to be used for residential, commercial, industrial, and other uses contemplated by the urban renewal plan, and to provide utilities to the development site; and

(k) to lend or invest funds obtained from the federal government for the purposes of this act if allowable under federal laws or regulations.

50-2015. COOPERATION BY PUBLIC BODIES.

(a) For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project and related activities authorized by this act, any public body may, upon such terms, with or without consideration, as it may determine:
    (1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other rights or privileges therein to an urban renewal agency;
    (2) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;
    (3) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan and related activities;
    (4) grant or contribute funds to an urban renewal agency and borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county or other public body, or from any other source;
    (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with the federal government, an urban renewal agency or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project and related activities; and
    (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways or other places; plan or replan, zone or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the urban renewal agency. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, other than the urban renewal agency, which is authorized by law to engage in the undertaking, carrying out, or administration of urban renewal projects and related activities (including any agency or instrumentality of the United States of America), the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency.

(b) Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

(c) For the purpose of aiding in the planning, undertaking or carrying out of any urban renewal project and related activities of an urban renewal agency, a municipality may (in addition to its other powers and upon such terms, with or

without consideration, as it may determine) do and perform any or all of the actions or things which, by the provisions of subsection (a) of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance: Provided, that nothing contained in this section shall be construed as authorizing a municipality to give credit or make loans to an urban renewal agency.

(d) For the purposes of this section, a municipality may (in addition to its other powers):
   (1) appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and levy taxes and assessments for curbs and gutters, streets and sidewalks; zone or rezone any part of the municipality or make exceptions from building regulations; and enter into agreements with an urban renewal agency (which agreements may extend over any period, notwithstanding any provisions or rule of law to the contrary), respecting action to be taken by such municipality pursuant to any of the powers granted by this act:[;]
   (2) close, vacate, plan or replan streets, roads, sidewalks, ways or other places; and plan or replan any part of the municipality;
   (3) within its area of operation, organize, coordinate and direct the administration of the provisions of this act as they apply to such municipality in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively; and
   (4) assume the responsibility to bear any loss that may arise as the result of the exercise of authority by the urban renewal agency under subsection (d) of section 50-2007, Idaho Code, in the event that the real property is not made a part of the urban renewal project.

(e) For the purposes of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project and related activities of a municipality, such municipality may issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section shall be issued in the manner and within the limitations prescribed by the applicable laws of this state for the issuance and authorization of general obligation bonds by such municipality. Nothing in this section shall limit or otherwise adversely affect any other section of this act.

(f) Purchase and buy or otherwise acquire land in a project area from an agency for redevelopment in accordance with the plan, with or without consideration, as the agency may determine. Any public body which purchases, buys or otherwise acquires land in a project area from an agency for development pursuant to this subsection shall become obligated to:
   (1) use the property for the purpose designated in the redevelopment plans;
   (2) begin the redevelopment of the project area within a period of time which the agency fixes as reasonable; and
   (3) comply with other conditions which the agency deems necessary to carry out the purposes of this act.

50-2009. NEIGHBORHOOD AND COMMUNITY-WIDE PLANS.

(a) An urban renewal agency or any public body authorized to perform planning work may prepare a general neighborhood renewal plan for urban renewal areas which may be of such scope that urban renewal activities may have to be carried out in stages over an estimated period of up to ten (10) years. Such plan may include, but is not limited to, a preliminary plan which
   (1) outlines the urban renewal activities proposed for the area involved,
   (2) provides a framework for the preparation of urban renewal plans, and
   (3) indicates generally the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property and portions of the area contemplated for clearance and redevelopment. A general neighborhood renewal plan shall, in the determination of the local governing body, conform to the general plan of the locality as a whole and the workable program of the municipality.

(b) A municipality or any public body authorized to perform planning work may prepare or complete a community-wide plan or program for urban renewal which shall conform to the general plan for the development of the municipality as a whole and may include, but is not limited to, identification of slum, blighted, deteriorated or deteriorating areas, measurement of blight, determination of resources needed and available to renew such areas, identification of potential project areas and types of action contemplated, and scheduling of urban renewal activities.

(c) Authority is hereby vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor.

CHAPTER 21 CONSOLIDATION OF CITIES

50-2101. CONSOLIDATION OF CITIES. Two (2) or more cities, each one of which is contiguous to the other, or to one of the other of said cities, all of which shall be incorporated under general law, may become consolidated into one (1) city, to be thereafter governed in the name and under the government of the greater or greatest in population, as shown by the last federal census, pursuant to proceedings had and taken in accordance with the provisions of sections 50-2101 through 50-2114.

CHAPTER 22 DISINCORPORATION PROCEDURE
CHAPTER 23 REORGANIZATION OF CITIES UNDER GENERAL LAWS
CHAPTER 24 POLICE COURTS -- [REPEALED]
CHAPTER 25 UNDERGROUND CONVERSION OF UTILITIES

CHAPTER 26 BUSINESS IMPROVEMENT DISTRICTS

50-2601. AUTHORIZATION -- PURPOSES -- SPECIAL ASSESSMENTS. The legislature hereby authorizes all incorporated cities:

(1) To establish business improvement districts, hereafter referred to as district or districts, for the following purposes:
   (a) The acquisition, construction or maintenance of parking facilities for the benefit of the district;
   (b) Physical improvement and decoration of any public space in the district;
   (c) Promotion of public events which are to take place on or in public places in the district;
   (d) The acquisition and operation of transportation services to promote retail trade activities within the district; and
   (e) The general promotion of retail trade activities in the district.
(2) To levy special assessments on all businesses or business property within the district and specially benefited by a business improvement district to pay the damages or costs incurred therein as provided in this chapter.

CHAPTER 27 MUNICIPAL INDUSTRIAL DEVELOPMENT PROGRAM
CHAPTER 28 IDAHO PRIVATE ACTIVITY BOND CEILING ALLOCATION ACT

CHAPTER 29 LOCAL ECONOMIC DEVELOPMENT ACT

50-2902. FINDINGS AND PURPOSE. It is hereby found and declared that there exists in municipalities a need to raise revenue to finance the economic growth and development of urban renewal areas and competitively disadvantaged border community areas. The purpose of this act is to provide for the allocation of a portion of the property taxes levied against taxable property located in a revenue allocation area for a limited period of time to assist in the financing of urban renewal plans, to encourage private development in urban renewal areas and competitively disadvantaged border community areas, to prevent or arrest the decay of urban areas due to the inability of existing financing methods to promote needed public improvements, to encourage taxing districts to cooperate in the allocation of future tax revenues arising in urban areas and competitively disadvantaged border community areas in order to facilitate the long-term growth of their common tax base, and to encourage private investment within urban areas and competitively disadvantaged border community areas. The foregoing purposes are hereby declared to be valid public purposes for municipalities.

50-2903. DEFINITIONS. The following terms used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Act" or "this act" means this revenue allocation act.
(2) "Agency" or "urban renewal agency" means a public body created pursuant to section 50-2006, Idaho Code.
(3) "Authorized municipality" or "municipality" means any county or incorporated city which has established an urban renewal agency, or by ordinance has identified and created a competitively disadvantaged border community.
(4) "Base assessment roll" means the equalized assessment rolls, for all classes of taxable property, on January 1 of the year in which the local governing body of an authorized municipality passes an ordinance adopting or modifying an urban renewal plan containing a revenue allocation financing provision, except that the base assessment roll shall be adjusted as follows: the equalized assessment valuation of the taxable property in a revenue allocation area as shown upon the base assessment roll shall be reduced by the amount by which the equalized assessed valuation as shown on the base assessment roll exceeds the current equalized assessed valuation of any taxable property located in the revenue allocation area, and by the equalized assessed valuation of taxable property in such revenue allocation area that becomes exempt from taxation subsequent to the date of the base assessment roll. The equalized assessed valuation of the taxable property in a revenue allocation area as shown on the base assessment roll shall be increased by the equalized assessed valuation, as of the date of the base assessment roll, of taxable property in such revenue allocation area that becomes taxable after the date of the base assessment roll.
(5) "Budget" means an annual estimate of revenues and expenses for the following fiscal year of the agency. An agency shall, by September 1 of each calendar year, adopt and publish, as described in section 50-1002, Idaho Code, a budget

for the next fiscal year. An agency may amend its adopted budget using the same procedures as used for adoption of the budget. For the fiscal year that immediately predates the termination date for an urban renewal plan involving a revenue allocation area or will include the termination date, the agency shall adopt and publish a budget specifically for the projected revenues and expenses of the plan and make a determination as to whether the revenue allocation area can be terminated before the January 1 of the termination year pursuant to the terms of section 50-2909(4), Idaho Code. In the event that the agency determines that current tax year revenues are sufficient to cover all estimated expenses for the current year and all future years, by September 1 the agency shall adopt a resolution advising and notifying the local governing body, the county auditor, and the state tax commission and recommending the adoption of an ordinance for termination of the revenue allocation area by December 31 of the current year and declaring a surplus to be distributed as described in section 50-2909, Idaho Code, should a surplus be determined to exist. The agency shall cause the ordinance to be filed with the office of the county recorder and the Idaho state tax commission as provided in section 63-215, Idaho Code. Upon notification of revenues sufficient to cover expenses as provided herein, the increment value of that revenue allocation area shall be included in the net taxable value of the appropriate taxing districts when calculating the subsequent property tax levies pursuant to section 63-803, Idaho Code. The increment value shall also be included in subsequent notification of taxable value for each taxing district pursuant to section 63-1312, Idaho Code, and subsequent certification of actual and adjusted market values for each school district pursuant to section 63-315, Idaho Code.

(6) "Clerk" means the clerk of the municipality.

(7) "Competitively disadvantaged border community area" means a parcel of land consisting of at least forty (40) acres which is situated within the jurisdiction of a county or an incorporated city and within twenty-five (25) miles of a state or international border, which the governing body of such county or incorporated city has determined by ordinance is disadvantaged in its ability to attract business, private investment, or commercial development, as a result of a competitive advantage in the adjacent state or nation resulting from inequities or disparities in comparative sales taxes, income taxes, property taxes, population or unique geographic features.

(8) "Deteriorated area" means:

(a) Any area, including a slum area, in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(b) Any area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, results in economic underdevelopment of the area, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

(c) Any area which is predominately open and which because of obsolete platting, diversity of ownership, deterioration of structures or improvements, or otherwise, results in economic underdevelopment of the area or substantially impairs or arrests the sound growth of a municipality. The provisions of section 50-2008(d), Idaho Code, shall apply to open areas.

(d) Any area which the local governing body certifies is in need of redevelopment or rehabilitation as a result of a flood, storm, earthquake, or other natural disaster or catastrophe respecting which the governor of the state has certified the need for disaster assistance under any federal law.

(e) Any area which by reason of its proximity to the border of an adjacent state is competitively disadvantaged in its ability to attract private investment, business or commercial development which would promote the purposes of this chapter.

(9) "Facilities" means land, rights in land, buildings, structures, machinery, landscaping, extension of utility services, approaches, roadways and parking, handling and storage areas, and similar auxiliary and related facilities.

(10) "Increment value" means the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue

allocation area and that property's current base value on the base assessment roll, provided such difference is a positive value.

(11) "Local governing body" means the city council or board of county commissioners of a municipality.

(12) "Plan" or "urban renewal plan" means a plan, as it exists or may from time to time be amended, prepared and approved pursuant to section 50-2008, Idaho Code, and any method or methods of financing such plan, which methods may include revenue allocation financing provisions.

(13) "Project" or "urban renewal project" or "competitively disadvantaged border areas" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

(a) Acquisition of a deteriorated area or a deteriorating area or portion thereof;

(b) Demolition and removal of buildings and improvement;

(c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, open space, off-street parking facilities, public facilities, public recreation and entertainment facilities or buildings and other improvements necessary for carrying out, in the urban renewal area or competitively disadvantaged border community area, the urban renewal objectives of this act in accordance with the urban renewal plan or the competitively disadvantaged border community area ordinance.

(d) Disposition of any property acquired in the urban renewal area or the competitively disadvantaged border community area (including sale, initial leasing or retention by the agency itself) or the municipality creating the competitively disadvantaged border community area at its fair value for uses in accordance with the urban renewal plan except for disposition of property to another public body;

(e) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(f) Acquisition of real property in the urban renewal area or the competitively disadvantaged border community area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property;

(g) Acquisition of any other real property in the urban renewal area or competitively disadvantaged border community area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or to prevent the spread of blight or deterioration, or to provide land for needed public facilities or where necessary to accomplish the purposes for which a competitively disadvantaged border community area was created by ordinance;

(h) Lending or investing federal funds; and

(i) Construction of foundations, platforms and other like structural forms.

(14) "Project costs" includes, but is not limited to:

(a) Capital costs, including the actual costs of the construction of public works or improvements, facilities, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; and the clearing and grading of land;

(b) Financing costs, including interest during construction and capitalized debt service or repair and replacement or other appropriate reserves;

(c) Real property assembly costs, meaning any deficit incurred from the sale or lease by a municipality of real or personal property within a revenue allocation district;

(d) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(e) Direct administrative costs, including reasonable charges for the time spent by municipal employees in connection with the implementation of a project plan;

(f) Relocation costs;

(g) Other costs incidental to any of the foregoing costs.

(15) "Revenue allocation area" means that portion of an urban renewal area or competitively disadvantaged border community area the equalized assessed valuation (as shown by the taxable property assessment rolls) of which the local governing body has determined, on and as a part of an urban renewal plan, is likely to increase as a result of the initiation of an urban renewal project or competitively disadvantaged border community area. The base assessment roll or rolls of revenue allocation area or areas shall not exceed at any time ten percent (10%) of the current assessed valuation of all taxable property within the municipality.

(16) "State" means the state of Idaho. (17) "Tax" or "taxes" means all property tax levies upon taxable property. (18) "Taxable property" means taxable real property, personal property, operating property, or any other tangible or intangible property included on the equalized assessment rolls. (19) "Taxing district" means a taxing district as defined in section 63-201, Idaho Code, as that section now exists or may hereafter be amended. (20) "Termination date" means a specific date no later than twenty-four (24) years from the effective date of an urban renewal plan or as described in section 50-2904, Idaho Code, on which date the plan shall terminate. Every urban renewal plan shall have a termination date that can be modified or extended subject to the twenty-four (24) year maximum limitation. Provided however, the duration of a revenue allocation financing provision may be extended as provided in section 50-2904, Idaho Code.

50-2904. AUTHORITY TO CREATE REVENUE ALLOCATION AREA. An authorized municipality is hereby authorized and empowered to adopt, at any time, a revenue allocation financing provision, as described in this chapter, as part of an urban renewal plan or competitively disadvantaged border community area ordinance. A revenue allocation financing provision may be adopted either at the time of the original adoption of an urban renewal plan or the creation by ordinance of a competitively disadvantaged border community area or thereafter as a modification of an urban renewal plan or the ordinance creating the competitively disadvantaged border community area. Urban renewal plans existing prior to the effective date of this section may be modified to include a revenue allocation financing provision. Except as provided below, no revenue allocation provision of an urban renewal plan or competitively disadvantaged border community area ordinance, including all amendments thereto, shall have a duration exceeding twenty-four (24) years from the date the ordinance is approved by the municipality. The duration of the revenue allocation financing provision may be extended if:

(1) The maturity date of any bonds issued to provide funds for a specific project in the revenue allocation area and payable from the revenue allocation financing provision exceeds the duration of the revenue allocation financing provision, provided such bond maturity is not greater than thirty (30) years; or

(2) The urban renewal agency determines that it is necessary to refinance outstanding bonds payable from the revenue allocation financing provision to a maturity exceeding the twenty-four (24) year duration of the revenue allocation financing provision in order to avoid a default on the bonds; or

(3) The local governing body has adopted an urban renewal plan or competitively disadvantaged border community area ordinance or an amendment to an urban renewal plan or competitively disadvantaged border community area ordinance prior to July 1, 2000, in which is defined the duration of the plan beyond a period of twenty-four (24) years, in which case the revenue allocation provision shall have a duration as described in such urban renewal plan or competitively disadvantaged border community ordinance; and

(4) During the extensions set forth in subsections (1) and (2) of this section, any revenue allocation revenues exceeding the amount necessary to repay the bonds during the period exceeding the twenty-four (24) year maturity of the revenue allocation financing provision shall be returned to the taxing districts in the revenue allocation area on a pro rata basis.

58-801. ENTRY OF TOWN. It is the duty of the corporate authorities of any city or incorporated town, or a judge of the district court within any county in which is situated any unincorporated town, to enter at the proper land office of the United States such quantity of land as the inhabitants of such city or town may be entitled to claim, in the aggregate, according to the

population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect this chapter and chapter 8 of title 32 of the Revised Statutes of the United States, and to make proof, when required of the facts necessary to establish the claim of such inhabitants to the lands so granted by the laws of congress.

67-6501. SHORT TITLE. This act shall be known as the "Local Land Use Planning Act."

67-6502. PURPOSE. The purpose of this act shall be to promote the health, safety, and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks. 3
(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.
(c) To ensure that the economy of the state and localities is protected.
(d) To ensure that the important environmental features of the state and localities are protected.
(e) To encourage the protection of prime agricultural, forestry, and mining lands for production of food, fibre, and minerals.
(f) To encourage urban and urban-type development within incorporated cities.
(g) To avoid undue concentration of population and overcrowding of land.
(h) To ensure that the development on land is commensurate with the physical characteristics of the land.
(i) To protect life and property in areas subject to natural hazards and disasters.
(j) To protect fish, wildlife, and recreation resources.
(k) To avoid undue water and air pollution.
(l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis

67-6503. PARTICIPATION OF LOCAL GOVERNMENTS. Every city and county shall exercise the powers conferred by this chapter.

67-6504. PLANNING AND ZONING COMMISSION -- CREATION -- MEMBERSHIP -- ORGANIZATION -- RULES -- RECORDS -- EXPENDITURES -- STAFF. A city council or board of county commissioners, hereafter referred to as a governing board, may exercise all of the powers required and authorized by this chapter in accordance with this chapter. If a governing board chooses to exercise the powers required and authorized by this chapter it need not follow the procedural requirements established hereby solely for planning and zoning commissions. If a governing board does not elect to exercise the powers conferred by this chapter, it shall establish by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, a planning commission and a zoning commission or a planning and zoning commission acting in both capacities, which may act with the full authority of the governing board, excluding the authority to adopt ordinances or to finally approve land subdivisions. The powers of the board of county commissioners conferred by this chapter shall apply to the unincorporated area of the county. Legally authorized planning, zoning, or planning and zoning commissions existing prior to enactment of this chapter shall be considered to be duly constituted under this chapter. Within this chapter use of the term "planning and zoning commission" shall include the term "planning commission," "zoning commission" and "planning and zoning commission."

(a) Membership -- Each commission shall consist of not less than three (3) nor more than twelve (12) voting members, all appointed by a mayor or chairman of the county board of commissioners and confirmed by majority vote of the governing board. An appointed member of a commission must have resided in the county for at least two (2) years prior to his appointment, and must remain a resident of the county during his service on the commission. Not more than one-third (1/3) of the members of any commission appointed by the chairman of the board of county commissioners may reside within an incorporated city of one thousand five hundred (1,500) or more population in the county. At least one-half (1/2) of the members of any commission appointed by the chairman of the board of county commissioners must reside outside the boundaries of any city's area of impact. The ordinance establishing a commission to exercise the powers under this chapter shall set forth the number of members to be appointed. The term of office for members shall be not less than three (3) years, nor more than six (6) years, and the length of term shall be prescribed by ordinance. No person shall serve more than two (2) full consecutive terms without specific concurrence by two-thirds (2/3) of the governing board adopted by

motion and recorded in the minutes. Vacancies occurring otherwise than through the expiration of terms shall be filled in the same manner as the original appointment. Members may be removed for cause by a majority vote of the governing board. Members shall be selected without respect to political affiliation and may receive such mileage and per diem compensation as provided by the governing board. If a governing board exercises these powers, its members shall be entitled to no additional mileage or per diem compensation.

(b) Organization -- Each commission shall elect a chairman and create and fill any other office that it may deem necessary. A commission may establish subcommittees, advisory committees or neighborhood groups to advise and assist in carrying out the responsibilities under this chapter. A commission may appoint nonvoting ex officio advisors as may be deemed necessary.

(c) Rules, Records, and Meetings -- Written organization papers or bylaws consistent with this chapter and other laws of the state for the transaction of business of the commission shall be adopted. A record of meetings, hearings, resolutions, studies, findings, permits, and actions taken shall be maintained. All meetings and records shall be open to the public. At least one (1) regular meeting shall be held each month for not less than nine (9) months in a year. A majority of currently-appointed voting members of the commission shall constitute a quorum.

(d) Expenditures and Staff -- With approval of a governing board through the legally required budgetary process, the commission may receive and expend funds, goods, and services from the federal government or agencies and instrumentalities of state or local governments or from civic and private sources and may contract with these entities and provide information and reports as necessary to secure aid. Expenditures by a commission shall be within the amounts appropriated by a governing board. Within such limits, any commission is authorized to hire or contract with employees and technical advisors, including, but not limited to, planners, engineers, architects, and legal assistants.

67-6505. JOINT PLANNING AND ZONING COMMISSION -- FORMATION -- DUTIES. The boards of county commissioners of two (2) or more adjoining counties, alone or together with the council of one (1) or more cities therein, or the board of county commissioners of a county together with the council of one (1) or more cities within the county, or the councils of two (2) or more adjoining cities, are empowered to cooperate in the establishment of a joint planning, zoning, or planning and zoning commission, hereafter referred to as a joint commission, and may provide for participation by invitation of other public agencies deemed necessary to exercise the powers conferred in this chapter. The number of members of a joint commission, the method of appointment, and the allocation of costs for activities to be borne by the participating governing boards shall be agreed upon by the governing boards and agencies involved. A joint commission is further authorized and empowered to perform any of the duties for any local member's governing board when the duties have been authorized by that member government.

67-6506. CONFLICT OF INTEREST PROHIBITED. A governing board creating a planning, zoning, or planning and zoning commission, or joint commission shall provide that the area and interests within its jurisdiction are broadly represented on the commission. A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. For purposes of this section the term "participation" means engaging in activities which constitute deliberations pursuant to the open meeting act. No member of a governing board or a planning and zoning commission with a conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest. A member with a conflict of interest shall not be prohibited from testifying at, or presenting evidence to, a public hearing or similar public process after acknowledging nonparticipation in the matter due to a conflict of interest. A knowing violation of this section shall be a misdemeanor.

67-6507. THE PLANNING PROCESS AND RELATED POWERS OF THE COMMISSION. As part of of the planning process, a planning or zoning commission shall provide for citizen meetings, hearings, surveys, or other methods, to obtain advice on the planning process, plan, and implementation. The commission may also conduct informational meetings and consult with public officials and agencies, public utility companies, and civic, educational, professional, or other organizations. As part of the planning process, the commission shall endeavor to promote a public interest in and understanding of the commission's activities. The commission may, at any time, make recommendations to the governing board concerning the plan, planning process, or implementation of the plan. With the consent of the owner, the commission and its members, officers, and employees, in the performance of their

functions, may enter upon any land and make examinations and surveys and place and maintain necessary monuments and marks thereon. The commission may perform such additional duties as may be assigned by the governing board. The commission shall have the right to seek judicial process, as may be necessary to enable it to fulfill its functions.

67-6508. PLANNING DUTIES. It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components as they may apply to land use regulations and actions unless the plan specifies reasons why a particular component is unneeded.

(a) Property Rights -- An analysis of provisions which may be necessary to insure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property and analysis as prescribed under the declarations of purpose in chapter 80, title 67, Idaho Code.

(b) Population -- A population analysis of past, present, and future trends in population including such characteristics as total population, age, sex, and income.

(c) School Facilities and Transportation -- An analysis of public school capacity and transportation considerations associated with future development.

(d) Economic Development -- An analysis of the economic base of the area including employment, industries, economies, jobs, and income levels.

(e) Land Use -- An analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public facilities. A map shall be prepared indicating suitable projected land uses for the jurisdiction.

(f) Natural Resource -- An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, watersheds, and shorelines.

(g) Hazardous Areas -- An analysis of known hazards as may result from susceptibility to surface ruptures from faulting, ground shaking, ground failure, landslides or mudslides; avalanche hazards resulting from development in the known or probable path of snowslides and avalanches, and floodplain hazards.

(h) Public Services, Facilities, and Utilities -- An analysis showing general plans for sewage, drainage, power plant sites, utility transmission corridors, water supply, fire stations and fire fighting equipment, health and welfare facilities, libraries, solid waste disposal sites, schools, public safety facilities and related services. The plan may also show locations of civic centers and public buildings.

(i) Transportation -- An analysis, prepared in coordination with the local jurisdiction(s) having authority over the public highways and streets, showing the general locations and widths of a system of major traffic thoroughfares and other traffic ways, and of streets and the recommended treatment thereof. This component may also make recommendations on building line setbacks, control of access, street naming and numbering, and a proposed system of public or other transit lines and related facilities including rights-of-way, terminals, future corridors, viaducts and grade separations. The component may also include port, harbor, aviation, and other related transportation facilities.

(j) Recreation -- An analysis showing a system of recreation areas, including parks, parkways, trailways, river bank greenbelts, beaches, playgrounds, and other recreation areas and programs.

(k) Special Areas or Sites -- An analysis of areas, sites, or structures of historical, archeological, architectural, ecological, wildlife, or scenic significance.

(l) Housing -- An analysis of housing conditions and needs; plans for improvement of housing standards; and plans for the provision of safe, sanitary, and adequate housing, including the provision for low-cost conventional housing, the siting of manufactured housing and mobile homes in subdivisions and parks and on individual lots which are sufficient to maintain a competitive market for each of those housing types and to address the needs of the community.

(m) Community Design -- An analysis of needs for governing landscaping, building design, tree planting, signs, and suggested patterns and standards for community design, development, and beautification.

(n) Implementation -- An analysis to determine actions, programs, budgets, ordinances, or other methods including scheduling of public expenditures to provide for the timely execution of the various components of the plan. Nothing herein shall preclude the consideration of additional planning components or subject matter.

67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE PLAN.

(a) The planning or planning and zoning commission, prior to recommending the

plan, amendment, or repeal of the plan to the governing board, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the plan to be discussed shall be published in the official newspaper or paper of general circulation within the jurisdiction. The commission shall also make available a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice of intent to adopt, repeal or amend the plan shall be sent to all political subdivisions providing services within the planning jurisdiction, including school districts, at least fifteen (15) days prior to the public hearing scheduled by the commission. Following the commission hearing, if the commission recommends a material change to the proposed amendment to the plan which was considered at the hearing, it shall give notice of its proposed recommendation and conduct another public hearing concerning the matter if the governing board will not conduct a subsequent public hearing concerning the proposed amendment. If the governing board will conduct a subsequent public hearing, notice of the planning and zoning commission recommendation shall be included in the notice of public hearing provided by the governing board. A record of the hearings, findings made, and actions taken by the commission shall be maintained by the city or county.

(b) The governing board, as provided by local ordinance, prior to adoption, amendment, or repeal of the plan, may conduct at least one (1) public hearing, in addition to the public hearing(s) conducted by the commission, using the same notice and hearing procedures as the commission. The governing board shall not hold a public hearing, give notice of a proposed hearing, nor take action upon the plan, amendments, or repeal until recommendations have been received from the commission. Following consideration by the governing board, if the governing board makes a material change in the recommendation or alternative options contained in the recommendation by the commission concerning adoption, amendment or repeal of a plan, further notice and hearing shall be provided before the governing board adopts, amends or repeals the plan.

(c) No plan shall be effective unless adopted by resolution by the governing board. A resolution enacting or amending a plan or part of a plan may be adopted, amended, or repealed by definitive reference to the specific plan document. A copy of the adopted or amended plan shall accompany each adopting resolution and shall be kept on file with the city clerk or county clerk.

(d) Any person may petition the commission or, in absence of a commission, the governing board, for a plan amendment at any time. The commission may recommend amendments to the land use map component of the comprehensive plan to the governing board not more frequently than once every six (6) months. The commission may recommend amendments to the text of the comprehensive plan and to other ordinances authorized by this chapter to the governing board at any time.

67-6509A. SITING OF MANUFACTURED HOMES IN RESIDENTIAL AREAS -- PLAN TO BE AMENDED.

(1) By resolution or ordinance adopted, amended or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, each governing board shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses, except for lands falling within an area defined as a historic district under section 67-4607, Idaho Code, to allow for siting of manufactured homes as defined in section 39-4105, Idaho Code.

(2) Manufactured homes on individual lots zoned for single-family residential uses as provided in subsection (1) of this section shall be in addition to manufactured homes on lots within designated mobile home parks or manufactured home subdivisions.

(3) This section shall not be construed as abrogating a recorded restrictive covenant.

(4) A governing board may adopt any or all of the following placement standards, or any less restrictive standards, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than one thousand (1,000) square feet;

(b) The manufactured home shall be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the home is located not more than twelve (12) inches above grade;

(c) The manufactured home shall have a pitched roof, except that no standards shall require a slope of greater than a nominal three (3) feet in height for each twelve (12) feet in width;

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority;

(e) The manufactured home shall have a garage or carport constructed of like materials if zoning ordinances would require a newly constructed nonmanufactured home to have a garage or carport;

(f) In addition to the provisions of paragraphs (a) through (e) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirements to which a conventional single-family residential dwelling on the same lot would be subjected.

(5) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

67-6509B. MANUFACTURED HOUSING COMMUNITY -- EQUAL TREATMENT REQUIRED

67-6510. MEDIATION -- TIME LIMITATIONS TOLLED.

(1) The procedure established for the processing of applications by this chapter or by local ordinance shall include the option of mediation upon the written request of the applicant, an affected person, the zoning or planning and zoning commission or the governing board. Mediation may occur at any point during the decision-making process or after a final decision has been made. If mediation occurs after a final decision, any resolution of differences through mediation must be the subject of another public hearing before the decision-making body.

(2) The applicant and any other affected persons objecting to the application shall participate in at least one (1) mediation session if mediation is requested by the commission or the governing board. The governing board shall select and pay the expense of the mediator for the first meeting among the interested parties. Compensation of the mediator shall be determined among the parties at the outset of any mediation undertaking. An applicant may decline to participate in mediation requested by an affected person, and an affected person may decline to participate in mediation requested by the applicant, except that the parties shall participate in at least one (1) mediation session if directed to do so by the governing board.

(3) During mediation, any time limitation relevant to the application shall be tolled. Such tolling shall cease when the applicant or any other affected person, after having participated in at least one (1) mediation session, states in writing that no further participation is desired and notifies the other parties, or upon notice of a request to mediate wherein no mediation session is scheduled for twenty-eight (28) days from the date of such request.

(4) The mediation process may be undertaken pursuant to the general limitations established by this section or pursuant to local ordinance provisions not in conflict herewith.

(5) The mediation process shall not be part of the official record regarding the application.

67-6511. ZONING ORDINANCE. Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan. Within a zoning district, the governing board shall where appropriate, establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district. Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. An amendment of a zoning ordinance applicable to an owner's lands or approval of conditional rezoning or denial of a request for rezoning may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

(b) After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject an ordinance amendment pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code, provided that in the case of a zoning district boundary change, and notwithstanding jurisdictional boundaries, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within three hundred (300) feet of the external boundaries of the land being

considered, and any additional area that may be impacted by the proposed change as determined by the commission. Notice shall also be posted on the premises not less than one (1) week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board subject to applicable procedures.

(c) If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to section 67-6511(b), Idaho Code.

(d) If a governing board adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the governing board shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the governing board adopted said individual property owner's request for a zoning classification change. If the governing body does reverse its action or otherwise change the zoning classification of said property during the above four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this section.

67-6511A. DEVELOPMENT AGREEMENTS. Each governing board may, by ordinance adopted or amended in accordance with the notice and hearing provisions provided under section 67-6509, Idaho Code, require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel. The governing board shall adopt ordinance provisions governing the creation, form, recording, modification, enforcement and termination of conditional commitments. Such commitments shall be recorded in the office of the county recorder and shall take effect upon the adoption of the amendment to the zoning ordinance. Unless modified or terminated by the governing board after a public hearing, a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel. A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment. A commitment may be modified only by the permission of the governing board after complying with the notice and hearing provisions of section 67-6509, Idaho Code. A commitment may be terminated, and the zoning designation upon which the use is based reversed, upon the failure of the requirements in the commitment after a reasonable time as determined by the governing board or upon the failure of the owner; each subsequent owner or each other person acquiring an interest in the parcel to comply with the conditions in the commitment and after complying with the notice and hearing provisions of section 67-6509, Idaho Code. By permitting or requiring commitments by ordinance the governing board does not obligate itself to recommend or adopt the proposed zoning ordinance. A written commitment shall be deemed written consent to rezone upon the failure of conditions imposed by the commitment in accordance with the provisions of this section.

67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES.

a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not

in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those: (1) Minimizing adverse impact on other development; (2) Controlling the sequence and timing of development; (3) Controlling the duration of development; (4) Assuring that development is maintained properly; (5) Designating the exact location and nature of development; (6) Requiring the provision for on-site or off-site public facilities or services; (7) Requiring more restrictive standards than those generally required in an ordinance; (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

67-6513. SUBDIVISION ORDINANCE. Each governing board shall provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code. Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision. Fees established for purposes of mitigating the financial impacts of development must comply with the provisions of chapter 82, title 67, Idaho Code. Denial of a subdivision permit or approval of a subdivision permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

67-6514. EXISTING ZONING OR SUBDIVISION ORDINANCES. A governing board, using any zoning or subdivision ordinance in existence on the effective date of this chapter, shall conduct a review of those ordinances and shall make necessary amendments in accordance with this chapter prior to January 1, 1978, following notice and hearing pursuant to section 67-6509, Idaho Code.

67-6515. PLANNED UNIT DEVELOPMENTS. As part of or separate from the zoning ordinance, each governing board may provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for planned unit development permits. A planned unit development may be defined in a local ordinance as an area of land in which a variety of residential, commercial, industrial, and other land uses are provided for under single ownership or control. Planned unit development ordinances may include, but are not limited to, requirements for minimum area, permitted uses, ownership, common open space, utilities, density, arrangements of land uses on a site, and permit processing. Planned unit developments may be permitted pursuant to the procedures for processing applications for special use permits following the notice and hearing procedures

provided in section 67-6512, Idaho Code. Denial of a planned unit development permit or approval of a planned unit development permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

67-6515A. TRANSFER OF DEVELOPMENT RIGHTS.

(1) Any city or county governing body may, by ordinance, create development rights and establish procedures authorizing landowners to voluntarily transfer said development rights subject to:
   (a) Such conditions as the governing body shall determine to fulfill the goals of the city or county to preserve open space, protect wildlife habitat and critical areas, and enhance and maintain the rural character of lands with contiguity to agricultural lands suitable for long-range farming and ranching operations; and
   (b) Voluntary acceptance by the landowner of the development rights and any land use restrictions conditional to such acceptance.

(2) Before designating sending areas and receiving areas, a city or county shall conduct an analysis of the market in an attempt to assure that areas designated as receiving areas will have the capacity to accommodate the number of development rights expected to be generated from the sending areas.

(3) Ordinances providing for a transfer of development rights shall not require a property owner in a sending area to sell development rights. Once a transfer of development rights has been exercised it shall constitute a restriction on the development of the property in perpetuity, unless the city or county elects to extinguish such restriction pursuant to the provisions of this chapter.

(4) A city or county may not condition an application for a permit to which an applicant is otherwise entitled under existing zoning and subdivision ordinances on the acquisition of development rights. A city or county may not condition an application for a zoning district boundary change, which is consistent with the comprehensive plan on the acquisition of development rights. A city or county may not reduce the density of an existing zone and thereafter require an applicant to acquire development rights as a condition of approving a request for a zoning district boundary change which would permit greater density.

(5) It shall be at the discretion of the persons selling and buying a transferable development right to determine whether a right will be transferred permanently without being exercised in a designated receiving area or whether a right will have requirements to be exercised within a designated receiving area within a set time period. If the development right is not used before the end of the time period provided by written contract and any extension thereof, the development right will revert to the owner of the property from which it was transferred.

(6) No transfer of a development right, as contemplated herein, shall affect the validity or continued right to use any water right that is appurtenant to the real property from which such development right is transferred. The transfer of a water right shall remain subject to the provisions of title 42, Idaho Code.
   (a) Ordinances providing for the transfer of development rights shall prescribe procedures for the issuance and recording of the instruments necessary to sever development rights from the sending property and to affix the development rights to the receiving property. These instruments shall specifically describe the property, shall be executed by all lienholders and other parties with an interest of record in any of the affected property, and shall be recorded with the county recorder. Transfers of development rights without such written and recorded consent shall be void.
   (b) A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, his heirs, successors and assigns. An unexercised development right shall not be taxed as real or personal property.

(7) For the purposes of this section:
   (a) "Development rights" shall mean the rights permitted to a lot, parcel or area of land under a zoning or other ordinance respecting permissible use, area, density, bulk or height of improvements. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.
   (b) "Receiving area" shall mean one (1) or more designated areas of land to which development rights generated from one (1) or more sending areas may be transferred and in which increased development is permitted to occur by reason of such transfer.
   (c) "Sending area" shall mean one (1) or more designated areas of land in which development rights may be designated for use in one (1) or more receiving areas.
   (d) "Transfer of development rights" shall mean the process by which development rights are transferred from one (1) lot, parcel or area of land in any sending area to another lot, parcel or area of land in one (1) or more receiving areas.

67-6516. VARIANCE -- DEFINITION -- APPLICATION -- NOTICE -- HEARING. Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration. Denial of a variance permit or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

67-6517. FUTURE ACQUISITIONS MAP. Upon the recommendation of the planning or planning and zoning commission each governing board may adopt, amend, or repeal a future acquisitions map in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code. The map shall designate land proposed for acquisition by a public agency for a maximum twenty (20) year period. Lands designated for acquisition may include land for:

(a) Streets, roads, other public ways, or transportation facilities proposed for construction or alteration;
(b) Proposed schools, airports, or other public buildings;
(c) Proposed parks or other open spaces; or
(d) Lands for other public purposes.

Upon receipt of a request for a permit as defined in this chapter, or a building permit as defined in a local ordinance, for a development on any lands designated upon the future acquisitions map, the zoning or planning and zoning commission or the governing board shall notify the public agency proposing to acquire the land. Within thirty (30) days of the date of that notice, the public agency may, in writing, request the commission or governing board to suspend consideration of the permit for sixty (60) days from the date of the request to allow the public agency to negotiate with the land owner to obtain an option to purchase the land, acquire the land, or institute condemnation proceedings as may be authorized in the Idaho Code. If the public agency fails to do so within the sixty (60) days, the commission or governing board shall resume consideration of the permit. Nothing in this chapter shall limit a governing board from adopting local ordinances as required or authorized which include lands on the future acquisitions map.

67-6518. STANDARDS. Each governing board may adopt standards for such things as: building design; blocks, lots, and tracts of land; yards, courts, greenbelts, planting strips, parks, and other open spaces; trees; signs; parking spaces; roadways, streets, lanes, bicycleways, pedestrian walkways, rights-of-way, grades, alignments, and intersections; lighting; easements for public utilities; access to streams, lakes, and viewpoints; water systems; sewer systems; storm drainage systems; street numbers and names; house numbers; schools, hospitals, and other public and private development. Standards may be provided as part of zoning, subdivision, planned unit development, or separate ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code. Whenever the ordinances made under this chapter impose higher standards than are required by any other statute or local ordinance, the provisions of ordinances made pursuant to this chapter shall govern.

67-6519. PERMIT GRANTING PROCESS.

(1) As part of ordinances required or authorized under this chapter, a procedure shall be established for processing in a timely manner applications for permits for which a reasonable fee may be charged.
(2) Each application for a permit required or authorized under this chapter shall first be submitted to the zoning or planning and zoning commission for its recommendation or decision. The commission shall have a reasonable time fixed by the governing board to examine the application before the commission makes its decision on the permit or makes its recommendation to the governing board. Each commission or governing board shall establish by rule a time period within which a recommendation or decision must be made. Provided however, any permit application which relates to a public school facility shall receive priority consideration and shall be reviewed for approval, denial or recommendation by the commission or the governing board at the earliest reasonable time, regardless of the timing of its submission relative to other applications which are not related to public school facilities.
(3) When considering a permit application which relates to a public school facility, the commission shall specifically review the permit application for the effect it will have on increased vehicular, bicycle and pedestrian volumes on adjacent roads and highways. To ensure that the state highway system or the local highway system can satisfactorily accommodate the proposed school

project, the commission shall request the assistance of the Idaho transportation department if state highways are affected, or the local highway district with jurisdiction if the affected roads are not state highways. The Idaho transportation department, the appropriate local highway jurisdiction, or both as determined by the commission, shall review the application and shall report to the commission on the following issues as appropriate: the land use master plan; school bus plan; access safety; pedestrian plan; crossing guard plan; barriers between highways and school; location of school zone; need for flashing beacon; need for traffic control signal; anticipated future improvements; speed on adjacent highways; traffic volumes on adjacent highways; effect upon the highway's level of service; need for acceleration or deceleration lanes; internal traffic circulation; anticipated development on surrounding undeveloped parcels; zoning in the vicinity; access control on adjacent highways; required striping and signing modifications; funding of highway improvements to accommodate development; proposed highway projects in the vicinity; and any other issues as may be considered appropriate to the particular application.

(4) Whenever a governing board or zoning or planning and zoning commission grants or denies a permit, it shall specify:
   (a) The ordinance and standards used in evaluating the application;
   (b) The reasons for approval or denial; and
   (c) The actions, if any, that the applicant could take to obtain a permit. An applicant denied a permit or aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code.

67-6520 HEARING EXAMINERS. Hearing examiners include professionally trained or licensed staff planners, engineers, or architects. If authorized by local ordinance adopted, amended, or repealed in accordance with the noticeand hearing procedures provided in section 67-6509, Idaho Code, hearing examiners may be appointed by a governing board or zoning or planning and zoning commission for hearing applications for subdivision, special use and variance permits and requests for zoning district boundary changes which are in accordance with the plan. Notice, hearing, and records before the examiner shall be as provided in this chapter for the zoning or planning and zoning commission. Whenever a hearing examiner hears an application, he may, pursuant to local ordinance, grant or deny the application or submit a recommendation to the governing board or zoning or planning and zoning commission. His decision or recommendation shall specify:

   (a) the ordinance and standards used in evaluating the application;
   (b) the reasons for the recommendation or decision; and
   (c) the actions, if any, that the applicant could take to obtain a permit or zoning district boundary change in accordance with the plan. An applicant denied a permit or aggrieved by a decision may within twenty-eight (28) days after all appellate remedies have been exhausted under local ordinance seek judicial review as provided by chapter 52, title 67, Idaho Code.

67-6521 ACTIONS BY AFFECTED PERSONS.

(1) (a) As used herein, an affected person shall mean one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing the development.
   (b) Any affected person may at any time prior to final action on a permit required or authorized under this chapter, if no hearing has been held on the application, petition the commission or governing board in writing to hold a hearing pursuant to section 67-6512, Idaho Code; provided, however, that if twenty (20) affected persons petition for a hearing, the hearing shall be held.
   (c) After a hearing, the commission or governing board may: (i) Grant or deny a permit; or (ii) Delay such a decision for a definite period of time for further study or hearing. Each commission or governing board shall establish by rule and regulation a time period within which a recommendation or decision must be made.
   (d) An affected person aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by chapter 52, title 67, Idaho Code.

(2) (a) Authority to exercise the regulatory power of zoning in land use planning shall not simultaneously displace coexisting eminent domain authority granted under section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code.
   (b) An affected person claiming "just compensation" for a perceived "taking," the basis of the claim being that a specific zoning action or permitting action restricting private property development is actually a regulatory action by local government deemed "necessary to complete the development of the material resources of the state," or necessary for other public uses, may seek a judicial determination of whether the claim comes within defined provisions of section 14, article I, of the constitution of the state of Idaho relating to eminent domain. Under these circumstances, the affected

person is exempt from the provisions of subsection (1) of this section and may seek judicial review through an inverse condemnation action specifying neglect by local government to provide "just compensation" under the provisions of section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code.

67-6522. COMBINING OF PERMITS -- PERMITS TO ASSESSOR. Where practical, the governing board or zoning or planning and zoning commission may combine related permits for the convenience of applicants. State and federal agencies should make every effort to combine or coordinate related permits with the local governing board or commission. Appropriate permits as defined by local ordinance shall be forwarded to the county assessor.

67-6523. EMERGENCY ORDINANCES AND MORATORIUMS. If a governing board finds that an imminent peril to the public health, safety, or welfare requires adoption of ordinances as required or authorized under this chapter, or adoption of a moratorium upon the issuance of selected classes of permits, or both, it shall state in writing its reasons for that finding. The governing board may then proceed without recommendation of a commission, upon any abbreviated notice of hearing that it finds practical, to adopt the ordinance or moratorium. An emergency ordinance or moratorium may be effective for a period of not longer than one hundred eighty-two (182) days. Restrictions established by an emergency ordinance or moratorium may not be imposed for consecutive periods. Further, an intervening period of not less than one (1) year shall exist between an emergency ordinance or moratorium and reinstatement of the same. To sustain restrictions established by an emergency ordinance or moratorium beyond the one hundred eighty-two (182) day period, a governing board must adopt an interim or regular ordinance, following the notice and hearing procedures provided in section 67-6509, Idaho Code.

67-6524. INTERIM ORDINANCES AND MORATORIUMS. If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt interim ordinances as required or authorized under this chapter, following the notice and hearing procedures provided in section 67-6509, Idaho Code. The governing board may also adopt an interim moratorium upon the issuance of selected classes of permits if, in addition to the foregoing, the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one (1) calendar year, when it shall be in full force and effect. To sustain restrictions established by an interim ordinance or moratorium, a governing board must adopt a regular ordinance, following the notice and hearing procedures provided in section 67-6509, Idaho Code.

67-6525. PLAN AND ZONING ORDINANCE CHANGES UPON ANNEXATION OF UNINCORPORATED AREA. Prior to annexation of an unincorporated area, a city council shall request and receive a recommendation from the planning and zoning commission, or the planning commission and the zoning commission, on the proposed plan and zoning ordinance changes for the unincorporated area. Each commission and the city council shall follow the notice and hearing procedures provided in section 67-6509, Idaho Code. Concurrently or immediately following the adoption of an ordinance of annexation, the city council shall amend the plan and zoning ordinance.

67-6526. AREAS OF CITY IMPACT -- NEGOTIATION PROCEDURE.

(a) The governing board of each county and each city therein shall adopt by ordinance following the notice and hearing procedures provided in section 67-6509, Idaho Code, a map identifying an area of city impact within the unincorporated area of the county. A separate ordinance providing for application of plans and ordinances for the area of city impact shall be adopted. Subject to the provisions of section 50-222, Idaho Code, an area of city impact must be established before a city may annex adjacent territory. This separate ordinance shall provide for one (1) of the following:
    (1) Application of the city plan and ordinances adopted under this chapter to the area of city impact; or
    (2) Application of the county plan and ordinances adopted under this chapter to the area of city impact; or
    (3) Application of any mutually agreed upon plan and ordinances adopted under this chapter to the area of city impact. Areas of city impact, together with plan and ordinance requirements, may cross county boundaries by agreement of the city and county concerned if the city is within three (3) miles of the adjoining county.

(b) If the requirements of section 67-6526(a), Idaho Code, have not been met, either the city or the county may demand compliance with this section by providing written notice to the other of said demand for compliance. Once a demand has been made, the city shall select its representative as hereinafter provided, within thirty (30) days of said demand, and the process set forth in this subsection shall commence. The county commissioners for the county concerned, together with three (3) elected city officials designated by the mayor of the city and confirmed by the council, shall, within thirty (30) days after the city

officials have been confirmed by the council, select three (3) city or county residents. These nine (9) persons shall, by majority vote, recommend to the city and county governing boards an area of city impact together with plan and ordinance requirements. The recommendations shall be submitted to the governing boards within one hundred eighty (180) days after the selection of the three (3) members at large and shall be acted upon by the governing boards within sixty (60) days of receipt. If the city or county fails to enact ordinances providing for an area of city impact, plan, and ordinance requirements, either the city or county may seek a declaratory judgment from the district court identifying the area of city impact, and plan and ordinance requirements. In defining an area of city impact, the following factors shall be considered: (1) trade area; (2) geographic factors; and (3) areas that can reasonably be expected to be annexed to the city in the future.

(c) If areas of city impact overlap, the cities involved shall negotiate boundary adjustments to be recommended to the respective city councils. If the cities cannot reach agreement, the board of county commissioners shall, upon a request from either city, within thirty (30) days, recommend adjustments to the areas of city impact which shall be adopted by ordinance by the cities following the notice and hearing procedures provided in section 67-6509, Idaho Code. If any city objects to the recommendation of the board of county commissioners, the county shall conduct an election, subject to the provisions of section 34-106, Idaho Code, and establish polling places for the purpose of submitting to the qualified electors residing in the overlapping impact area, the question of which area of city impact the electors wish to reside. The results of the election shall be conclusive and binding, and no further proceedings shall be entertained by the board of county commissioners, and the decision shall not be appealable by either city involved. The clerk of the board of county commissioners shall by abstract of the results of the election, certify that fact, record the same and transmit copies of the original abstract of the result of the election to the clerk of the involved cities.

(d) Areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate. In the event the city and county cannot agree, the judicial review process of subsection (b) of this section shall apply. Renegotiations shall begin within thirty (30) days after written request by the city or county and shall follow the procedures for original negotiation provided in this section.

(e) Prior to negotiation or renegotiation of areas of city impact, plan, and ordinance requirements, the governing boards shall submit the questions to the planning, zoning, or planning and zoning commission for recommendation. Each commission shall have a reasonable time fixed by the governing board to make its recommendations to the governing board. The governing boards shall undertake a review at least every ten (10) years of the city impact plan and ordinance requirements to determine whether renegotiations are in the best interests of the citizenry.

(f) This section shall not preclude growth and development in areas of any county within the state of Idaho which are not within the areas of city impact provided for herein.

(g) If the area of impact has been delimited pursuant to the provisions of subsection (a)(1) of this section, persons living within the delimited area of impact shall be entitled to representation on the planning, zoning, or the planning and zoning commission of the city of impact. Such representation shall as nearly as possible reflect the proportion of population living within the city as opposed to the population living within the areas of impact for that city. To achieve such proportional representation, membership of the planning, zoning or planning and zoning commission, may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code. In instances where a city has combined either or both of its planning and zoning functions with the county, representation on the resulting joint planning, zoning or planning and zoning commission shall as nearly as possible reflect the proportion of population living within the impacted city, the area of city impact outside the city, and the remaining unincorporated area of the county. Membership on such a joint planning, zoning or planning and zoning commission may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code.

67-6527 VIOLATIONS -- CRIMINAL PENALTIES -- ENFORCEMENT

67-6528. APPLICABILITY OF ORDINANCES. The state of Idaho, and all its agencies, boards, departments, institutions, and local special purpose districts, shall comply with all plans and ordinances adopted under this chapter unless otherwise provided by law. In adoption and implementation of the plan and ordinances, the governing board or commission shall take into account the plans and needs of the state of Idaho and all agencies, boards, departments, institutions, and local special purpose districts. The provisions of plans and ordinances enacted pursuant to this chapter shall not apply to transportation systems of statewide importance as may be determined by the Idaho transportation board. The Idaho transportation board shall consult with the local agencies affected specifically on site plans and design of transportation systems within local jurisdictions. If a

public utility has been ordered or permitted by specific order, pursuant to title 61, Idaho Code, to do or refrain from doing an act by the public utilities commission, any action or order of a governmental agency pursuant to titles 31, 50 or 67, Idaho Code, in conflict with said public utilities commission order, shall be insofar as it is in conflict, null and void if prior to entering said order, the public utilities commission has given the affected governmental agency an opportunity to appear before or consult with the public utilities commission with respect to such conflict.

67-6529. APPLICABILITY TO AGRICULTURAL LAND -- COUNTIES MAY REGULATE SITING OF CERTAIN ANIMAL OPERATIONS AND FACILITIES.

(1) No power granted hereby shall be construed to empower a board of county commissioners to enact any ordinance or resolution which deprives any owner of full and complete use of agricultural land for production of any agricultural product. Agricultural land shall be defined by local ordinance or resolution.
(2) Notwithstanding any provision of law to the contrary, a board of county commissioners shall enact ordinances and resolutions to regulate the siting of large confined animal feeding operations and facilities, as they shall be defined by the board, provided however, that the definition of a confined animal feeding operation shall not be less restrictive than the definition contained in section 67-6529C, Idaho Code, including the approval or rejection of sites for the operations and facilities. At a minimum, a county's ordinance or resolution shall provide that the board of county commissioners shall hold at least one (1) public hearing affording the public an opportunity to comment on each proposed site before the siting of such facility. Several sites may be considered at any one (1) public hearing. Only members of the public with their primary residence within a one (1) mile radius of a proposed site may provide comment at the hearing. However, this distance may be increased by the board. A record of each hearing and comments received shall be made by the board. The comments shall be duly considered by the board when deciding whether to approve or reject a proposed site. A board of county commissioners may reject a site regardless of the approval or rejection of the site by a state agency.

67-6529A. SHORT TITLE. This act shall be referred to as the "Site Advisory Team Suitability Determination Act."

67-6529B. LEGISLATIVE FINDINGS AND PURPOSES. The legislature finds that:

(1) Confined animal feeding operations increase social and environmental impacts in areas where these facilities are located;
(2) The siting of confined animal feeding operations is a complex and technically difficult undertaking requiring assistance to counties and other units of local government as they exercise their land use planning authority;
(3) It is in the interest of the state of Idaho that state departments and agencies use their particular expertise to assist counties and other local governments in the environmental evaluation of appropriate sites for confined animal feeding operations.

67-6529C. DEFINITIONS. As used in this act, the following definitions shall apply:

(1) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by one (1), plus the number of young slaughter or feeder cattle less than twelve (12) months of age multiplied by six-tenths (0.6), plus the number of mature dairy cattle multiplied by one and four-tenths (1.4), plus the number of young dairy cattle multiplied by six-tenths (0.6), plus the number of swine weighing over twenty-five (25) kilograms, approximately fifty-five (55) pounds, multiplied by four-tenths (0.4), plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (0.1), plus the number of sheep multiplied by one-tenth (0.1), plus the number of horses multiplied by two (2), plus the number of chickens multiplied by one-hundredth (0.01);
(2) "CAFO," also referred to as "concentrated animal feeding operation" or "confined animal feeding operation," means a lot or facility where the following conditions are met:
    (a) Animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period;
    (b) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility; and
    (c) The lot or facility is designed to confine or actually does confine an equivalent of one thousand (1,000) animal units or more. Two (2) or more concentrated animal feeding operations under common ownership are considered, for the purposes of this definition, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes;
(3) "CAFO site advisory team" shall mean representatives of the Idaho state department of agriculture, Idaho department of environmental quality and Idaho department of water resources who review a site proposed for a CAFO, determine

environmental risks and submit a suitability determination to a county. The department of agriculture shall serve as the lead agency for the team;

(4) "Environmental risk" shall mean that risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team's suitability determination report;

(5) "Suitability determination" shall mean that document created and submitted by the CAFO site advisory team after review and analysis of a proposed CAFO site that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks and sets forth any possible mitigation of risk.

67-6529D. ODOR MANAGEMENT PLANS -- COUNTY REQUEST FOR SUITABILITY DETERMINATION -- LOCAL REGULATION

(1) Counties may require an applicant for siting of a CAFO to submit an odor management plan as part of their application.

(2) A board of county commissioners considering the siting of a CAFO may request the director of the department of agriculture to form a CAFO site advisory team to provide a suitability determination for the site.

(3) This act does not preempt local regulation of a CAFO.

67-6529E. PROCESS FOR COUNTY REQUEST -- CONTENTS OF THE REQUEST

(1) A board of county commissioners shall submit its request for a suitability determination by a site advisory team in writing to the director of the department of agriculture and shall support its request by the adoption of a resolution.

(2) Information in the request shall include, but not be limited to, the relevant legal description and address of a proposed facility, the animal-unit capacity of the facility, the types of animals to be confined at the proposed facility, all information related to water and water rights of the facility, any relevant vicinity maps and any other information relevant to the site that will assist the site advisory team in issuing its suitability determination. The board of county commissioners shall also provide the site advisory team with a copy of the odor management plan for the CAFO, if required to be submitted by the site applicant at the time of application.

67-6529F. DEPARTMENT RESPONSIBILITIES -- AUTHORITY TO ADOPT RULES AND CONTRACT WITH OTHER AGENCIES

1) Upon the request of a board of county commissioners, the director of the department of agriculture shall form and chair a site advisory team specific to the request of the county. The director of the department of environmental quality and the director of the department of water resources shall provide full cooperation in the formation of the site advisory team.

(3) The CAFO site advisory team shall review the information provided by the county and shall visit the site as may be necessary in the judgment of the team.

(4) Within thirty (30) days of receiving the request for a suitability determination by a board of county commissioners, the CAFO site advisory team shall issue a written suitability determination and provide a copy in writing to the board of county commissioners that requested the review.

(5) Any director responsible for carrying out the purposes of this act may adopt administrative rules necessary or helpful to carry out those purposes.

(6) Any director responsible for carrying out the purposes of this act may enter into contracts, agreements, memorandums and other arrangements with federal, state and local agencies to carry out the purposes of this act.

67-6529G. REPORT OF CAFO SITE ADVISORY TEAM -- COUNTY ACTION. The board of county commissioners requesting the suitability determination, upon receipt of the written suitability determination report by the CAFO site advisory team, may use the report as the county deems appropriate.

67-6530. DECLARATION OF PURPOSE67-6530. DECLARATION OF PURPOSE. The legislature declares that it is the policy of this state that mentally and/or physically handicapped or elderly persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability or advanced age, and in order to achieve statewide implementation of such policy it is necessary to establish the statewide policy that the use of property for the care of eight (8) or fewer mentally and/or physically handicapped or elderly persons is a residential use of such property for the purposes of local zoning.

(a) The approval or denial of any application provided for in this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county.
(b) The approval or denial of any application provided for in this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.
(c) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision-making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code.

67-6536. TRANSCRIBABLE RECORD. In every case in this chapter where an appeal is provided for, a transcribable verbatim record of the proceeding shall be made and kept for a period of not less than six (6) months after a final decision on the matter. The proceeding envisioned by this statute for which a transcribable verbatim record must be maintained shall include all public hearings at which testimony or evidence is received or at which an applicant or affected person addresses the commission or governing board regarding a pending application or during which the commission or governing board deliberates toward a decision after compilation of the record. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense. The governing board and commission shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law.

67-6537. APPLICATION TO GROUND WATER. When considering amending, repealing or adopting a comprehensive plan, the local governing board shall consider the effect the proposed amendment, repeal or adoption of the comprehensive plan would have on the quality of ground water in the area.

67-6538. USE FOR DESIGNED PURPOSE PROTECTED -- WHEN VACANCY OCCURS.
(1) No rights or authority granted pursuant to this chapter shall be construed to empower a city or county to enact any ordinance or resolution which deprives an owner of the right to use improvements on private property for their designed purpose based solely on the nonuse of the improvements for theirdesigned purpose for a period of ten (10) years or less. Where an owner or his authorized agent permits or allows an approved or unlawful intervening use of the owner's property, the provisions of this section are not applicable.
(2) If the nonuse continues for a period of one (1) year or longer, the city or county may, by written request, require that the owner declare his intention with respect to the continued nonuse of the improvements in writing within twenty-eight (28) days of receipt of the request. If the owner elects to continue the nonuse, he shall notify the city or county in writing of his intention and shall post the property with notice of his intent to continue the nonuse of the improvements. He shall also publish notice of his intent to continue the nonuse in a newspaper of general circulation in the county where the property is located. If the property owner complies with the requirements of this subsection, his right to use such improvements in the future for their designed purpose shall continue, notwithstanding any change in the zoning of the property.
(3) The property owner may voluntarily elect to withdraw the use by filing with the clerk of the city or the county, as the case may be, an affidavit of withdrawn use. If the property is redesigned for a different use, the property owner shall be deemed to have abandoned any grandfather right to the prior use of the property.
(4) For purposes of this section "designed purpose" means the use for which the improvements were originally intended, designed and approved pursuant to any applicable planning and zoning ordinances.
(5) The provisions of this section shall not be construed to prohibit a city or a county from passing or enforcing any other law or ordinance for the protection of the public health, safety and welfare.

CHAPTER 66 ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES -- LOBBYISTS
CHAPTER 67 IDAHO STATE COUNCIL ON DEVELOPMENTAL DISABILITIES
CHAPTER 68 ECONOMIC ESTIMATES

67-8201. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Development Impact Fee Act."

67-8202. PURPOSE. The legislature finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety and general welfare of the citizens of the state of Idaho. It is the intent by enactment of this chapter to:

(1) Ensure that adequate public facilities are available to serve new growth and development;
(2) Promote orderly growth and development by establishing uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;
(3) Establish minimum standards for the adoption of development impact fee ordinances by governmental entities;
(4) Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements; and
(5) Empower governmental entities which are authorized to adopt ordinances to impose development impact fees.

67-8203. DEFINITIONS. As used in this chapter:

(1) "Affordable housing" means housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the service area or areas within the jurisdiction of the governmental entity.
(2) "Appropriate" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity.
(3) "Capital improvements" means improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a public facility.
(4) "Capital improvement element" means a component of a comprehensive plan adopted pursuant to chapter 65, title 67, Idaho Code, which component meets the requirements of a capital improvements plan pursuant to this chapter.
(5) "Capital improvements plan" means a plan adopted pursuant to this chapter that identifies capital improvements for which development impact fees may be used as a funding source.
(6) "Developer" means any person or legal entity undertaking development, including a party that undertakes the subdivision of property pursuant to sections 50-1301 through 50-1334, Idaho Code.
(7) "Development" means any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, which creates additional demand and need for public facilities or the subdivision of property that would permit any change in the use, character or appearance of land.
(8) "Development approval" means any written authorization from a governmental entity which authorizes the commencement of a development.
(9) "Development impact fee" means a payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development. This term is also referred to as an impact fee in this chapter. The term does not include the following: (a) A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development; (b) Connection or hookup charges; (c) Availability charges for drainage, sewer, water, or transportation charges for services provided directly to the development; or (d) Amounts collected from a developer in a transaction in which the governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to section 67-8209(3), Idaho Code, for credit or reimbursement.
(10) "Development requirement" means a requirement attached to a developmental approval or other governmental action approving or authorizing a particular

development project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

(11) "Extraordinary costs" means those costs incurred as a result of an extraordinary impact.

(12) "Extraordinary impact" means an impact which is reasonably determined by the governmental entity to: (i) result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by section 67-8214(2), Idaho Code, or (ii) result in the need for system improvements which are not identified in the capital improvements plan.

(13) "Fee payer" means that person who pays or is required to pay a development impact fee.

(14) "Governmental entity" means any unit of local government that is empowered in this enabling legislation to adopt a development impact fee ordinance.

(15) "Impact fee." See development impact fee.

(16) "Land use assumptions" means a description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty (20) year period.

(17) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities.

(18) "Manufactured home" means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401, et seq.

(19) "Modular building" means any building or building component, other than a manufactured home, which is constructed according to standards contained in the Uniform Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

(20) "Present value" means the total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money.

(21) "Project" means a particular development on an identified parcel of land.

(22) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project.

(23) "Proportionate share" means that portion of the cost of system improvements determined pursuant to section 67-8207, Idaho Code, which reasonably relates to the service demands and needs of the project.

(24) "Public facilities" means: (a) Water supply production, treatment, storage and distribution facilities; (b) Wastewater collection, treatment and disposal facilities; (c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways; (d) Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements; (e) Parks, open space and recreation areas, and related capital improvements; and (f) Public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

(25) "Recreational vehicle" means a vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

(26) "Service area" means any defined geographic area identified by a governmental entity or by intergovernmental agreement in which specific public facilities provide service to development within the area defined, on the basis of sound planning or engineering principles or both.

(27) "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.

(28) "System improvements," in contrast to project improvements, means capital improvements to public facilities which are designed to provide service to a service area including, without limitation, the type of improvements described in section 50-1703, Idaho Code.

(29) "System improvement costs" means costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without

limitation, the type of costs described in section 50-1702(h), Idaho Code, to provide additional public facilities needed to serve new growth and development. For clarification, system improvement costs do not include: (a) Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plan; (b) Repair, operation or maintenance of existing or new capital improvements; (c) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards; (d) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development; (e) Administrative and operating costs of the governmental entity unless such costs are attributable to development of the capital improvement plan, as provided in section 67-8208, Idaho Code; or (f) Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan.

67-8204. MINIMUM STANDARDS AND REQUIREMENTS FOR DEVELOPMENT IMPACT FEES ORDINANCES. Governmental entities which comply with the requirements of this chapter may impose by ordinance development impact fees as a condition of development approval on all developments.

(1) A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with section 67-8207, Idaho Code. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(2) A development impact fee shall be calculated on the basis of levels of service for public facilities adopted in the development impact fee ordinance of the governmental entity that are applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.

(3) A development impact fee ordinance shall specify the point in the development process at which the development impact fee shall be collected. The development impact fee may be collected no earlier than the commencement of construction of the development, or the issuance of a building permit or a manufactured home installation permit, or as may be agreed by the developer and the governmental entity.

(4) A development impact fee ordinance shall be adopted in accordance with the procedural requirements of section 67-8206, Idaho Code.

(5) A development impact fee ordinance shall include a process whereby the governmental agency shall allow the developer, upon request by the developer, to provide a written individual assessment of the proportionate share of development impact fees under the guidelines established by this chapter which shall be set forth in the ordinance. The individual assessment process shall permit consideration of studies, data, and any other relevant information submitted by the developer to adjust the amount of the fee. The decision by the governmental agency on an application for an individual assessment shall include an explanation of the calculation of the impact fee, including an explanation of factors considered under section 67-8207, Idaho Code, and shall specify the system improvement(s) for which the impact fee is intended to be used.

(6) A development impact fee ordinance shall provide a process whereby a developer shall receive, upon request, a written certification of the development impact fee schedule or individual assessment for a particular project, which shall establish the development impact fee so long as there is no material change to the particular project as identified in the individual assessment application, or the impact fee schedule. The certification shall include an explanation of the calculation of the impact fee including an explanation of factors considered under section 67-8207, Idaho Code. The certification shall also specify the system improvement(s) for which the impact fee is intended to be used.

(7) A development impact fee ordinance shall include a provision for credits in accordance with the requirements of section 67-8209, Idaho Code.

(8) A development impact fee ordinance shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of section 67-8210, Idaho Code.

(9) A development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs incurred subsequent to adoption of the ordinance to the extent that new growth and development will be served by the system improvements.

(10) A development impact fee ordinance may exempt all or part of a particular development project from development impact fees provided that such project is determined to create affordable housing, provided that the public policy which supports the exemption is contained in the governmental entity's comprehensive plan and provided that the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees.

(11) A development impact fee ordinance shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and either within or for the benefit of the service area in which the project is located.

(12) A development impact fee ordinance shall provide for a refund of development impact fees in accordance with the requirements of section 67-8211, Idaho Code.

(13) A development impact fee ordinance shall establish for a procedure for timely processing of applications for determination by the governmental entity regarding development impact fees applicable to a project, individual assessment of development impact fees, credits or reimbursements to be allowed or paid under section 67-8209, Idaho Code, and extraordinary impact.

(14) A development impact fee ordinance shall specify when an application for an individual assessment of development impact fees shall be permitted to be made by a developer or fee payer. An application for an individual assessment of development impact fees shall be permitted sufficiently in advance of the time that the developer or fee payer may seek a building permit or related permits so that the issuance of a building permit or related permits will not be delayed.

(15) A development impact fee ordinance shall provide for appeals regarding development impact fees in accordance with the requirements of section 67-8212, Idaho Code.

(16) A development impact fee ordinance must provide a detailed description of the methodology by which costs per service unit are determined. The development impact fee per service unit may not exceed the amount determined by dividing the costs of the capital improvements described in section 67-8208(1)(f), Idaho Code, by the total number of projected service units described in section 67-8208(1)(g), Idaho Code. If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to the projected new service units described in section 67-8208(1)(g), Idaho Code, by the total projected new service units described in that section.

(17) A development impact fee ordinance shall include a schedule of development impact fees for various land uses per unit of development. The ordinance shall provide that a developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs, except as provided in section 67-8214(3), Idaho Code.

(18) After payment of the development impact fees or execution of an agreement for payment of development impact fees, additional development impact fees or increases in fees may not be assessed unless the number of service units increases or the scope or schedule of the development changes. In the event of an increase in the number of service units or schedule of the development changes, the additional development impact fees to be imposed are limited to the amount attributable to the additional service units or change in scope of the development.

(19) No system for the calculation of development impact fees shall be adopted which subjects any development to double payment of impact fees.

(20) A development impact fee ordinance shall exempt from development impact fees the following activities:

(a) Rebuilding the same amount of floor space of a structure which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;

(b) Remodeling or repairing a structure which does not increase the number of service units;

(c) Replacing a residential unit, including a manufactured home, with another residential unit on the same lot, provided that the number of service units does not increase;

(d) Placing a temporary construction trailer or office on a lot;

(e) Constructing an addition on a residential structure which does not increase the number of service units; and

(f) Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements.

(21) A development impact fee will be assessed for installation of a modular building, manufactured home or recreational vehicle unless the fee payer can demonstrate by documentation such as utility bills and tax records, either: (a) That a modular building, manufactured home or recreational vehicle was legally in place on the lot or space prior to the effective date of the development impact fee ordinance; or (b) That a development impact fee has been paid previously for the installation of a modular

building, manufactured home or recreational vehicle on that same lot or space.

(22) A development impact fee ordinance shall include a process for dealing with a project which has extraordinary impacts.

(23) A development impact fee ordinance shall provide for the calculation of a development impact fee in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or developers within the service area other than the person paying the fee.

(24) A development impact fee ordinance shall include a description of acceptable levels of service for system improvements.

(25) Any provision of a development impact fee ordinance that is inconsistent with the requirements of this chapter shall be null and void and that provision shall have no legal effect. A partial invalidity of a development impact fee ordinance shall not affect the validity of the remaining portions of the ordinance that are consistent with the requirements of this chapter.

67-8204A. INTERGOVERNMENTAL AGREEMENTS. Governmental entities as defined in section 67-8203(14), Idaho Code, which are jointly affected by development are authorized to enter into intergovernmental agreements with each other or with highway districts for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements, or both, provided that such agreement complies with any applicable state laws. Governmental entities are also authorized to enter into agreements with the Idaho transportation department for the expenditure of development impact fees pursuant to a developer's agreement under section 67-8214, Idaho Code.

67-8205. DEVELOPMENT IMPACT FEE ADVISORY COMMITTEE.

(1) Any governmental entity which is considering or which has adopted a development impact fee ordinance, shall establish a development impact fee advisory committee.

(2) The development impact fee advisory committee shall be composed of not fewer than five (5) members appointed by the governing authority of the governmental entity. Two (2) or more members shall be active in the business of development, building or real estate. An existing planning or planning and zoning commission may serve as the development impact fee advisory committee if the commission includes two (2) or more members who are active in the business of development, building or real estate; otherwise, two (2) such members who are not employees or officials of a governmental entity shall be appointed to the committee.

(3) The development impact fee advisory committee shall serve in an advisory capacity and is established to:
   (a) Assist the governmental entity in adopting land use assumptions;
   (b) Review the capital improvements plan, and proposed amendments, and file written comments;
   (c) Monitor and evaluate implementation of the capital improvements plan;
   (d) File periodic reports, at least annually, with respect to the capital improvements plan and report to the governmental entity any perceived inequities in implementing the plan or imposing the development impact fees; and
   (e) Advise the governmental entity of the need to update or revise land use assumptions, capital improvements plan and development impact fees.

(4) The governmental entity shall make available to the advisory committee, upon request, all financial and accounting information, professional reports in relation to other development and implementation of land use assumptions, the capital improvements plan and periodic updates of the capital improvements plan.

67-8206. PROCEDURE FOR THE IMPOSITION OF DEVELOPMENT IMPACT FEES.

(1) A development impact fee shall be imposed by a governmental entity in compliance with the provisions set forth in this section.

(2) A capital improvements plan shall be developed in coordination with the development impact fee advisory committee utilizing the land use assumptions most recently adopted by the appropriate land use planning agency or agencies.

(3) At least one (1) public hearing shall be held to consider adoption, amendment, or repeal of a capital improvements plan. Two (2) notices, at least one (1) week apart, of the time, place and purpose of the hearing shall be published not less than fifteen (15) nor more than thirty (30) days before the scheduled date of the hearing, in a newspaper of general circulation within the jurisdiction of the governmental entity. A second notice of the hearing on adoption of the capital improvements plan, containing the same information, shall be published in the same manner at least seven (7) days before the scheduled date of the hearing. Such notices

shall also include a statement that the governmental entity shall make available to the public, upon request, the following: proposed land use assumptions, a copy of the proposed capital improvements plan or amendments thereto, and a statement that any member of the public affected by the capital improvements plan or amendments shall have the right to appear at the public hearing and present evidence regarding the proposed capital improvements plan or amendments. The governmental entity shall send notice of the intent to hold a public hearing by mail to any person who has requested in writing notification of the hearing date at least fifteen (15) days prior to the hearing date, provided that the governmental entity may require that any person making such request renew the request for notification, not more frequently than once each year, in accordance with a schedule determined by the governmental entity, in order to continue receiving such notices.

(4) If the governmental entity makes a material change in the capital improvements plan or amendment, further notice and hearing may be provided before the governmental entity adopts the revision if the governmental entity makes a finding that further notice and hearing are required in the public interest.

(5) Following adoption of the initial capital improvements plan, a governmental entity shall conduct a public hearing to consider adoption of an ordinance authorizing the imposition of development impact fees or any amendment thereof. Notice of the hearing shall be provided in the same manner as set forth in subsection (3) of this section for adoption of a capital improvements plan.

(6) Nothing contained in this section shall be construed to alter the procedures for adoption of an ordinance by the governmental entity. Provided, however, a development impact fee ordinance shall not be adopted as an emergency measure and shall not take effect earlier than thirty (30) days subsequent to adoption.

67-8207. PROPORTIONATE SHARE DETERMINATION.

(1) All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in the provision of system improvements to serve the new development. The proportionate share is the cost attributable to the new development after the governmental entity considers the following:

(h) any appropriate credit, offset or contribution of money, dedication of land, or construction of system improvements;

(iii) payments reasonably anticipated to be made by or as a result of a new development in the form of user fees and debt service payments;

(iv) that portion of general tax and other revenues allocated by the jurisdiction to system improvements; and

(iv) all other available sources of funding such system improvements.

(2) In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the governmental entity imposing the development impact fee and accounted for in the calculation of the impact fee:

(a) The cost of existing system improvements within the service area or areas;

(b) The means by which existing system improvements have been financed;

(c) The extent to which the new development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions.

(d) The extent to which the new development is required to contribute to the cost of existing system improvements in the future.

(e) The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;

(f) Extraordinary costs, if any, incurred in serving the new development;

(g) The time and price differential inherent in a fair comparison of fees paid at different times; and

(h) The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The governmental entity shall develop a plan for alternative sources of revenue.

67-8208. CAPITAL IMPROVEMENTS PLAN.

(1) Each governmental entity intending to impose a development impact fee shall prepare a capital improvements plan. That portion of the cost of preparing a capital improvements plan which is attributable to determining the development impact fee may be funded by a one (1) time ad valorem levy which does not exceed two one-hundredths percent (.02%) of market value or by a surcharge imposed by ordinance on the collection of a development impact fee which surcharge does not exceed the development's proportionate share of the cost of preparing the plan. For governmental entities required to undertake comprehensive planning pursuant to chapter 65, title 67, Idaho Code, such

capital improvements plan shall be prepared and adopted according to the requirements contained in the local planning act, section 67-6509, Idaho Code, and shall be included as an element of the comprehensive plan. The capital improvements plan shall be prepared by qualified professionals in fields relating to finance, engineering, planning and transportation. The persons preparing the plan shall consult with the development impact fee advisory committee. The capital improvements plan shall contain all of the following:

(a) A general description of all existing public facilities and their existing deficiencies within the service area or areas of the governmental entity and a reasonable estimate of all costs and a plan to develop the funding resources related to curing the existing deficiencies including, but not limited to, the upgrading, updating, improving, expanding or replacing of such facilities to meet existing needs and usage;

(b) A commitment by the governmental entity to use other available sources of revenue to cure existing system deficiencies where practical;

(c) An analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing capital improvements, which shall be prepared by a qualified professional planner or by a qualified engineer licensed to perform engineering services in this state;

(d) A description of the land use assumptions by the government entity;

(e) A definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of system improvements and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, agricultural and industrial;

(f) A description of all system improvements and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, to provide a level of service not to exceed the level of service adopted in the development impact fee ordinance;

(g) The total number of service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(h) The projected demand for system improvements required by new service units projected over a reasonable period of time not to exceed twenty (20) years;

(i) Identification of all sources and levels of funding available to the governmental entity for the financing of the system improvements;

(j) If the proposed system improvements include the improvement of public facilities under the jurisdiction of the state of Idaho or another governmental entity, then an agreement between governmental entities shall specify the reasonable share of funding by each unit, provided the governmental entity authorized to impose development impact fees shall not assume more than its reasonable share of funding joint improvements, nor shall the agreement permit expenditure of development impact fees by a governmental entity which is not authorized to impose development impact fees unless such expenditure is pursuant to a developer agreement under section 67-8214, Idaho Code; and

(k) A schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the capital improvements plan.

(2) The governmental entity imposing a development impact fee shall update the capital improvements plan at least once every five (5) years. The five (5) year period shall commence from the date of the original adoption of the capital improvements plan. The updating of the capital improvements plan shall be made in accordance with procedures set forth in section 67-8206, Idaho Code.

(3) The governmental entity must annually adopt a capital budget.

(4) The capital improvements plan shall be updated in conformance with the provisions of subsection (2) of this section each time a governmental entity proposes the amendment, modification or adoption of a development impact fee ordinance.

67-8209. CREDITS.

(1) In the calculation of development impact fees for a particular project, credit or reimbursement shall be given for the present value of any construction of system improvements or contribution or dedication of land or money required by a governmental entity from a developer for system improvements of the category for which the development impact fee is being collected, including such system improvements paid for pursuant to a local improvement district. Credit or reimbursement shall not be given for project improvement.

(2) In the calculation of development impact fees for a particular project, credit shall be given for the present value of all tax and user fee revenue generated by the developer, within the service area where the impact fee is being assessed and used by the governmental agency for system improvements of the category for which the development impact fee is being collected. If the amount of credit exceeds the proportionate share for the particular project, the developer shall receive a credit on future impact fees for the amount in excess of the proportionate share. The credit may be applied by the developer as an offset against future impact fees only in the service area where the credit was generated.

(2) If a developer is required to construct, fund or contribute system improvements in excess of the development project's proportionate share of system improvement costs, including such system improvements paid for pursuant to a local improvement district, the developer shall receive a credit on future impact fees or be reimbursed at the developer's choice for such excess construction, funding or contribution from development impact fees paid by future development which impacts the system improvements constructed, funded or contributed by the developer(s) or fee payer.
(3) If credit or reimbursement is due to the developer pursuant to this section, the governmental entity shall enter into a written agreement with the fee payer, negotiated in good faith, prior to the construction, funding or contribution. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement.

67-8210. EARMARKING AND EXPENDITURE OF COLLECTED DEVELOPMENT IMPACT FEES.

(1) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in one (1) or more interest-bearing accounts within the capital projects fund. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned, and not funds subject to section 57-127, Idaho Code, and shall be subject to all restrictions placed on the use of development impact fees under the provisions of this chapter.
(2) Expenditures of development impact fees shall be made only for the category of system improvements and within or for the benefit of the service area for which the development impact fee was imposed as shown by the capital improvements plan and as authorized in this chapter. Development impact fees shall not be used for any purpose other than system improvement costs to create additional improvements to serve new growth.
(3) As part of its annual audit process, a governmental entity shall prepare an annual report:
    (a) Describing the amount of all development impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area; and
    (b) Describing the percentage of tax and revenues other than impact fees collected, appropriated or spent for system improvements during the preceding year by category of public facility and service area.
(4) Collected development impact fees must be expended within five (5) years from the date they were collected, on a first-in, first-out (FIFO) basis, except that the development impact fees collected for wastewater collection, treatment and disposal and drainage facilities must be expended within twenty (20) years. Any funds not expended within the prescribed times shall be refunded pursuant to section 67-8211, Idaho Code. A governmental entity may hold the fees for longer than five (5) years if it identifies, in writing:
    (a) A reasonable cause why the fees should be held longer than five (5) years; and
    (b) An anticipated date by which the fees will be expended but in no event greater than eight (8) years from the date they were collected.

67-8211. REFUNDS.

(1) Any governmental entity which adopts a development impact fee ordinance shall provide for refunds upon the request of an owner of property on which a development impact fee has been paid if:
    (a) Service is available but never provided;
    (b) A building permit or permit for installation of a manufactured home is denied or abandoned;
    (c) The governmental entity, after collecting the fee when service is not available, has failed to appropriate and expend the collected development impact fees pursuant to section 67-8210(4), Idaho Code; or
    (d) The fee payer pays a fee under protest and a subsequent review of the fee paid or the completion of an individual assessment determines that the fee paid exceeded the proportionate share to which the governmental entity was entitled to receive.
(2) When the right to a refund exists, the governmental entity is required to send a refund to the owner of record within ninety (90) days after it is determined by the governmental entity that a refund is due.
(3) A refund shall include a refund of interest at one-half (1/2) the legal rate provided for in section 28-22-104, Idaho Code, from the date on which the fee was originally paid.
(4) Any person entitled to a refund shall have standing to sue for a refund under the provisions of this chapter if there has not been a timely payment of a refund pursuant to subsection (2) of this section.

67-8212. APPEALS.

(1) A governmental entity which adopts a development impact fee ordinance shall provide for administrative appeals by the developer or fee payer from any discretionary action or inaction by or on behalf of the governmental entity.

(2) A fee payer may pay a development impact fee under protest in order to obtain a development approval or building permit. A fee payer making such payment shall not be estopped from exercising the right of appeal provided in this chapter, nor shall such fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected.
(3) A governmental entity which adopts a development impact fee ordinance shall provide for mediation by a qualified independent party, upon voluntary agreement by the fee payer and the governmental entity, to address a disagreement related to the impact fee for proposed development. The ordinance shall provide that mediation may take place at any time during the appeals process and participation in mediation does not preclude the fee payer from pursuing other remedies provided for in this section. The ordinance shall provide that mediation costs will be shared equally by the fee payer and the governmental entity.

67-8213. COLLECTION. A governmental entity may provide in a development impact fee ordinance the means for collection of development impact fees, including, but not limited to:
(1) Additions to the fee for reasonable interest and penalties for non-payment or late payment;
(2) Withholding of the building permit or other governmental approval until the development impact fee is paid;
(3) Withholding of utility services until the development impact fee is paid; and
(4) Imposing liens for failure to timely pay a development impact fee following procedures contained in chapter 5, title 45, Idaho Code. A governmental entity that discovers an error in its impact fee formula that results in assessment or payment of more than a proportionate share shall, at the time of assessment on a case by case basis, adjust the fee to collect no more than a proportionate share or discontinue the collection of any impact fees until the error is corrected by ordinance.

67-8214. OTHER POWERS AND RIGHTS NOT AFFECTED.
(1) Nothing in this chapter shall prevent a governmental entity from requiring a developer to construct reasonable project improvements in conjunction with a development project.
(2) Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers, the Idaho transportation department and governmental entities in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of credits or providing for reimbursement for project improvements which are used or shared by more than one (1) development project. If it can be shown that a proposed development has a direct impact on a public facility under the jurisdiction of the Idaho transportation department, then the agreement shall include a provision for the allocation of impact fees collected from the developer for the improvement of the public facility by the Idaho transportation department.
(3) Nothing in this chapter shall obligate a governmental entity to approve development which results in an extraordinary impact.
(4) Nothing in this chapter shall obligate a governmental entity to approve any development request which may reasonably be expected to reduce levels of service below minimum acceptable levels established in the development impact fee ordinance.
(5) Nothing in this chapter shall be construed to create any additional right to develop real property or diminish the power of counties or cities in regulating the orderly development of real property within their boundaries.
(6) Nothing in this chapter shall work to limit the use by governmental entities of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Idaho Code for local improvement districts or general obligation bond issues.
(7) Nothing herein shall restrict or diminish the power of a governmental entity to annex property into its territorial boundaries or exclude property from its territorial boundaries upon request of a developer or owner, or to impose reasonable conditions thereon, including the recovery of project or system improvement costs required as a result of such voluntary annexation.

67-8215. TRANSITION.
(1) The provisions of this chapter shall not be construed to repeal any existing laws authorizing a governmental entity to impose fees or require contributions or property dedications for capital improvements. All ordinances imposing development impact fees shall be brought into conformance with the provisions of this chapter within one (1) year after the effective date of this chapter. Impact fees collected and developer agreements entered into prior to the expiration of the one (1) year period shall not be invalid by reason of this chapter. After adoption of a development impact fee ordinance, in accordance with the provisions of this chapter, notwithstanding any other provision of law, development requirements for system improvements shall be imposed by

governmental entities only by way of development impact fees imposed pursuant to and in accordance with the provisions of this chapter.

(2) Notwithstanding any other provisions of this chapter, that portion of a project for which a valid building permit has been issued or construction has commenced prior to the effective date of a development impact fee ordinance shall not be subject to additional development impact fees so long as the building permit remains valid or construction is commenced and is pursued according to the terms of the permit or development approval.

67-8216. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.